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ABSTRACT

The seven chapters in this document provide an introduction to the problems of reduction in force (RIF), an overview of school enrollment trends in the United States and Nebraska, a historical view of RIF, the attitudes of various professional associations toward RIF, selected policies and procedures established by various states and school districts, considerations in the development of RIF policies, and the implications of RIF for educational planning. (Author/IRT)

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REDUCTION IN FORCE: POLICIES, PRACTICES AND IMPLICATIONS FOR EDUCATION

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by

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Table of Contents

I	Reduction in Force: An Introduction	1
II	School Enrollment Trends in the United States and Nebraska	7
III	Reduction in Force: A Historical View	17
IV	Reduction in Force as Viewed by Professional Associations	27
V	Selected Politices and Procedures Related to Reduction in Force	33
VI	Considerations in the Development of Reduction in Force Policies	71
VII	Implications of Reduction in Force for Educational Planning	79

Chapter I

REDUCTION IN FORCE: AN INTRODUCTION

A reduction in the number of persons employed by public elementary and secondary schools is one solution which has been proposed as a response to factors which are currently impacting upon education in the United States. Major factors which influence decisions about reduction in force (RIF) include declining enrollments, a continued rise in the costs of education, societal concerns about the total costs of government services, and an increasing public debate about the priority which differing services should receive when limited resources are allocated.

No single factor is more often cited as a basis for real or projected needs for reduction in force than changes in population characteristics. We are, in the 1970's, in the "post-youth" decade, a period of time when the average age in America is gradually increasing and the numbers of school age children are rapidly decreasing. Since 1970, when 45.9 million pupils were enrolled in public elementary and secondary schools--a high-water mark--there has been a decline of 3.1 million pupils (approximately 7%) and the projected enrollments for 1978-1979 are 42.8 million pupils. Within the next eight years, a moderate projection is for further decline in school enrollments to a figure of 38.2 million pupils.[1]

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[1]Table 2.8, "Enrollment in Regular Elementary and Secondary Day Schools, by Institutional Control and Organizational Level, with Alternate Projections: Fall 1954 to Fall 1986," in The Condition of Education, edited by Mary A. Golladay and Jay Noell, 1978 edition, National Center for Education Statistics, U.S. Department of Health, Education, and Welfare (Washington, D.C.), 66.

While enrollments have declined and will continue to decline for the forseeable future, the costs of education have steadily risen in both total dollar amounts and in per pupil expenditures. For more than a quarter century, education has commanded the largest share of State and local dollars; in 1976, 38% of State and local revenues were spent on education.[2] Between 1960 and 1977, average per pupil expenditures in the United States increased by 110 percent from $749 per pupil to $1,578 per pupil (with both figures being express in 1977 dollars).[3]

Since the costs of education are closely related to expenses for employment of personnel, with such costs often being 80% or more of a shcool's budget, reduction in force has emerged as one solution to the twin phenomena of declining enrollments and incresed costs of education.

Contending Forces

While reduction in force seems to be one solution to pressures felt by many school districts, decisions which are made will need to consider the impact of a number of other factors.

Reduction in Services to Kids (RISK). While declining enrollments and increased costs have placed pressures on the schools for reduction in force (RIF) and reduction in budgets (RIB), other social pressures have contributed to an increase in education personnel and increased educational costs. To accomplish RIB or RIF, a reduction in services to kids may be necessary. In the 1960's, the needs of poor and minority students were stressed; more recently, the needs of students from non-English-speaking backgrounds, gifted students, and handicapped students. "The additional services needed by these

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[2] The Condition of Education, ibid., 7.

[3] Ibid., 47.

groups and the best means of delivering them are still unresolved issues."[4] As pressures mount for RIB or as declining enrollments result in RIF practices, how will schools meet the needs of all students? Will reductions in program occur? What are the services provided by schools which can be cut?

Reduction in Budgets (RIB). Pressures for a reduction in budgets have already been noted. In many states, including Nebraska, movements have occurred to place limits ("lids") on either budgets or on taxing powers. It seems likely that such pressures will continue to mount during the next decade or even longer. Schools will be under various pressures for reduction in budgets because (1) enrollments are declining, (2) public priorities are gradually shifting and education, always a top priority, is now contending with other priority areas such as health services for the tax or budget dollar, and (3) there has been a continuing increase in the number of education personnel--a phenomenon which is not easily explained to the public.

Conflicting Views Between Educators and Citizens. One factor which will add to the debate over RIF (and RIB) is the view of many educators that current situations--declining enrollments and an excess of supply over demand in the preparation of new teachers--offer an opportunity for further reduction in pupil-teacher ratios or "class size." Many educators see the situation which exists as one in which education can be "improved" by a reduction in class size rather than reduction in force or reduction in budget. What is all too often overlooked is the repeated findngs of research that class size has little, if any, impact upon pupil achievement. Summarizing a review of more than 40 years of research on the effects of class size, Harris has noted:[5]

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[4]Ibid., 44.

[5]Richard L. Harris, "Research Evidence Regarding the Impact of Class Size on Pupil Academic Achievement," (Phoenix, Arizona: Maricopa County School Superintendent's Office, 1978), 19.

> Despite the mass of contrary evidence, it is difficult for many to accept the fact that class size is not an important input to the learning equation. It seems so logical that it would be. However, it also seems logical that the world is flat. Progress in educational outcomes will be seriously hampered unless we stop trying to defy the facts and instead use them judiciously to our advantage.

Among educators, emotion and belief rather than reason is likely to prevail when class size is considered; the National Education Association, for example, has recently suggested that the current situation permits schools to set a goal of teacher-pupil ratios of fifteen students per teacher. This figure can be compared to goals of 25 students per teacher a decade ago or current data which often show ratios of 18 or 20 pupils per teacher.

Pressures for School Reorganization. Both educators and citizens share a belief in the value of education and this belief is born out by available data--current and historical. While educators will be in conflict with parents about class size as a means of improving educational opportunity, citizens will be likely to continue to resist school reorganization even when financial conditions would make such reorganization desirable in both financial terms and in terms of eduational opportunities being provided. As Smail has recently reported, Nebraska districts with a K-12 enrollment of fewer than 350 students have been faced, during the past five years, with both an above-average increase in educational costs and a decline in the scope of educational opportunity being provided to students.[6] His data are confirmed by data reported by the U.S. Office of Education in its most recent statistical report on The Condition of Education; in their report, for the years 1970 to 1975, Nebraska is cited as a state in which educational disparities have increased.[7]

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[6]Herbert K. Smail, "An Analysis of Education Costs and Selected Indicators of Educational Opportunity in Nebraska's K-12 School Districts," Catalyst, 2:1, 25.

[7]The Condition of Education, op. cit., Table 2.13, 76-77.

It seems unlikely, however, that citizens will examine facts rather than beliefs and traditions when proposals are made for school district reorganization; indeed, a survey conducted in 1978 showed considerable controversy over the issue of school reorganization in Nebraska.[8]

Senority or Performance. While reduction in force (RIF) is a practice which has been applied in private businesses and in industry for a number of years, as noted in Chapter III, education does not have any wide experience with reduction in force as an organization need and practice. One critical issue is whether reductions, when they occur, should be based on seniority as an employee, seniority as a professional including work in other organizations, or on appraisals of employee performance. Within the social experience, the most common emphasis has been on senority with guidelines for the determination of seniority being a matter for labor-management negotiation.

Operating Assumptions

In the preceding pages, a brief overview has been given of some of the factors which are currently impacting upon K-12 education and on decisions being made for the operation of K-12 schools and school districts. While the focus has been national, and while conditions will vary within differing states and regions of the United States, the general set of pressures are ubiquitous, i.e., most school districts and most educational decision-makers will need to confront some or all of the issues which have been discussed.

A number of assumptions can be made and, indeed, were made in the preparation of this chapter and succeeding chapters. These assumptions include:

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[8]Edgar A. Kelley, "School Reorganization in Nebraska: A Chronic Controversy," Catalyst, 1:4, 41-53.

1. Most school districts will face, or already face, a need for the development of reduction in force policies and procedures for actual use to meet present or emerging conditions. (In Nebraska, all school districts are required by Legislative Bill 375, passed in the eighty-fifth legislative session, to adopt a reduction in force policy before January 1, 1979.)

2. Most school districts will need to respond to other factors which will accompany the need for RIF policies and procedures, including questions of reduction in budgets (RIB), reductions in curriculum (RIC) or reductions in services to kids (RISK), increases in operating costs, pressures by educators and educational organizations for rentention of staff, questions over the basis to be used for RIF decisions—seniority or performance—and issues of continuation of districts or reorganization of one form or another.

Chapter II

SCHOOL ENROLLMENT TRENDS IN THE UNITED STATES AND NEBRASKA

The number of school age children in the United States has declined during the past decade and will continue to decline during the immediate future. The number of teachers, however, has been increased and teacher-pupil ratios in American schools has been lowered.

The National Education Association (NEA) has suggested that one response to declining enrollments would be a further lowering of the teacher-pupil ratio, to a recommended level of one teacher for every 15 pupils. In many school districts, however, a more probable response is the reduction of staff numbers as a response to declining enrollments or to other social issues such as increased costs of education.

When decisions are made about staff needs in a school or school district, decision-makers must have up-to-date and valid information about student population trends. In this chapter, such information is presented for the United States and for the State of Nebraska. Information presented on national population trends and population mobility is projected through 1985-1986; information for the State of Nebraska is projected through the year 2020.

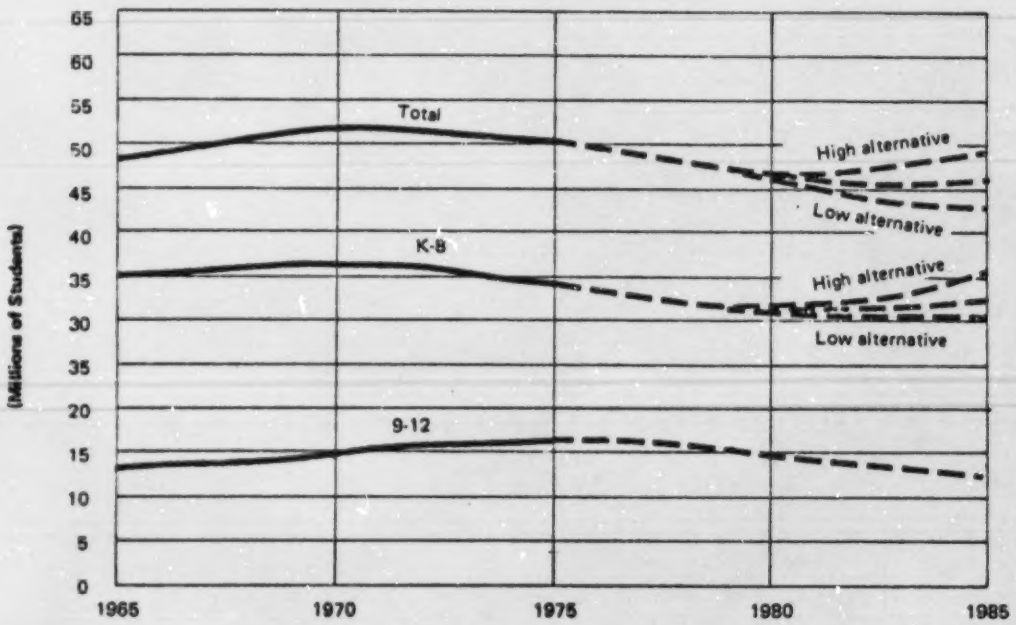
In 1975, the enrollment in elementary and secondary schools in the United States was 50.1 million pupils. This figure was 1.2 million fewer than in 1970 and, by 1985, the number of pupils will decline by 5 million more to a projected enrollment of 46.1 million pupils.

Between 1969 and 1975, enrollment in grades K-8 decreased by 2.4 million pupils, from 36.8 million in 1969 to 34.4 million in 1975. By 1981, a further decline of 2.7 million pupils is expected to leave K-8 enrollments at a projected figure of 31.7 million. By 1985, pupil enrollments in these grades

are expected to increase to 32.7 million. These enrollment projections are based on the assumption that the group fertility rate will be 2.1 births per woman, the replacement level of birth rates, and will remain constant during the period of projection.

Between 1965 and 1975, enrollments in grades 9-12 increased by 2.7 million to an enrollment figure of 15.7 million secondary students; this is the approximate high school enrollment for the 1978-1979 school year. By 1985, however, secondary enrollments are expected to decrese by 2.4 million to a projected enrollment of 13.3 million students. This decrease can be attributed to the lowered birth rates of the late 1960's. Figure 1 illustrates the enrollment data for the period of 1965 through 1985.[1]

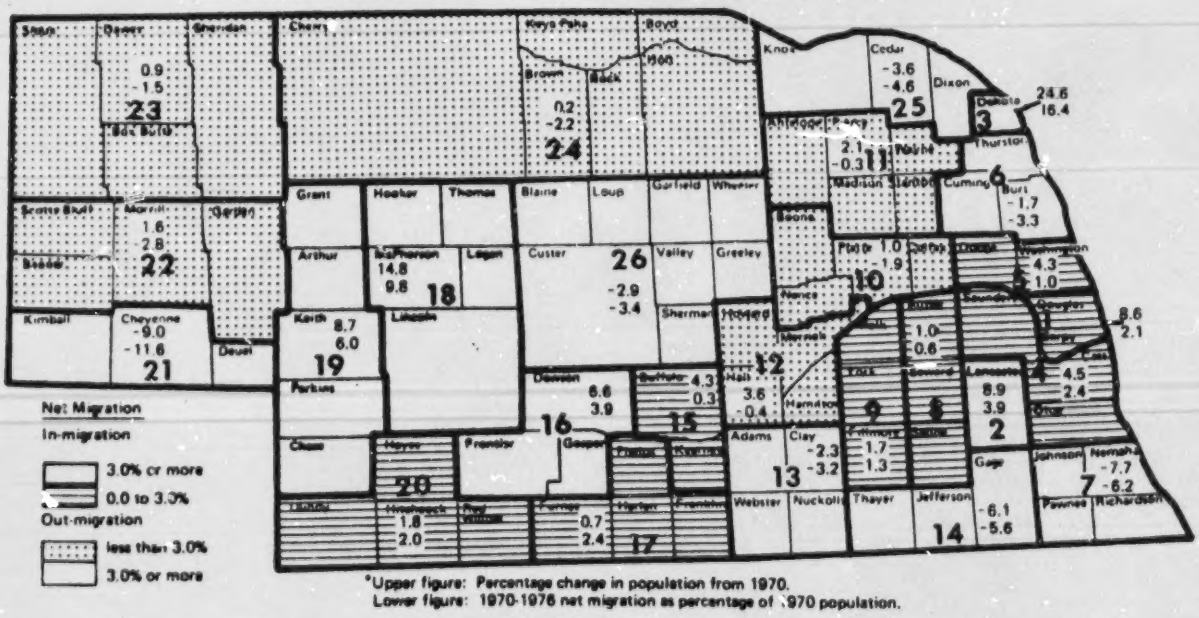
Figure 1.--Enrollment in grades K-12 of regular day schools, with alternatives: United States, fall 1965 to 1985



[1]Martin M. Frankel and Forrest W. Harrison, Projections of Educational Statistics to 1985-86, Washington, D.C.: United States Printing Office 1977, 14.

In the State of Nebraska population patterns generally follow the national trends. An encouraging fact is that net out-migration, which has occurred in previous decades, has not been evident in the 1970's. Most of the population growth since 1970 (4.5 percent) has resulted from natural increase (excess births over deaths). However, approximately one-fifth of the growth has resulted from net in-migration. Another encouraging sign is that all sections of the state appear to be sharing the trend toward population stability. The stabilizing of non-metropolitan population appears to be a nationwide trend. Another national trend, decline of metropolitan populations below 1970 census counts, is not evident in Nebraska's metropolitan areas. The map below illustrates the population changes and net migration in Nebraska for 1970-1976.[2]

POPULATION CHANGE AND NET MIGRATION IN NEBRASKA REGIONS, 1970 TO 1976*



*Upper figure: Percentage change in population from 1970.
Lower figure: 1970-1976 net migration as percentage of 1970 population.

[2] Vicki Stepp, UNL News: Business in Nebraska, Volume 57, No. 1; Lincoln, Nebraska: Bureau of Business Research in College of Business Administration, July, 1977, 1.

Arriving at population estimates for the future involves making assumptions about fertility and net migration for the state.

> The years since 1970 have witnessed crude birth rates (births per thousand total population) below any previous levels recorded for Nebraska as well as for the nation. In 1973 and 1974 Nebraska births per thousand population dropped below 15.0, compared to rates above 17.0 at the beginning of the decade and rates as high as 24.9 in the "baby boom" years of the 1950s. Even during the depression period of the 1930s, crude birth rates for Nebraska were estimated to have remained well above 16.0.[3]

While it might be interesting to conjecture about the sociological and economic reasons for decreased fertility rates, the important finding is that women now, compared to earlier periods of time, are having fewer children and are having children at a later point in the life cycle. If these fertility trends continue, it can be concluded that past fertility levels will not be reached in the near future.

In Nebraska Projections II, the Bureau of Business Research at the University of Nebraska-Lincoln has reported population projections for Nebraska through the year 2020. Information is reported for specific regions of the state and for each county in the state. Projections are made in three categories: high, medium, and low. The medium projections assume that Nebraska will experience no net migration, i.e., that population mobility from Nebraska to other states (out-migration) will be matched by persons moving into Nebraska from other states (in-migration). While the historical trend of out-migration from Nebraska has changed, available data would suggest that Nebraska can expect to experience a balance between in-migration and out-migration.

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[3]Vicki Stepp, Nebraska Projections II, Lincoln, Nebraska: Bureau of Business Research, University of Nebraska-Lincoln, July, 1976, 5.

If a balance in net migration occurs, the school age population of Nebraska will delcine from 419,846 in 1975 to a projected figure of 366,305 pupils in the year 2020. Between now and 1990 is the period of time when the greatest declines in the school age population in Nebraska will occur. The number of children in the 5-9 age group has almost reached its lowest point; numbers in this age group will begin to rise slightly as the number of women in the child bearing years increases.s In the 10-14 age group the number of children will decline from 148,259 in 1975 to 119,521 in 1980, a drop of 20% and a decline of 28,738 students. The number of students in this age group will decline by about 500 children from 1980-1985. From 1985-1990 the number is predicted to increase slightly and then stabilize at about 120,000 children with fluctuations of 2,000-3,000. Numbers of people in the 15-19 age group, representing the high school aged students, will decline from 151, 864 in 1975 to 119,072 in 1985. This decline of 22 percent will have a very dramatic effect on the high schools in the state of Nebraska.

Table I

Population Projections for State of Nebraska
1970-2020

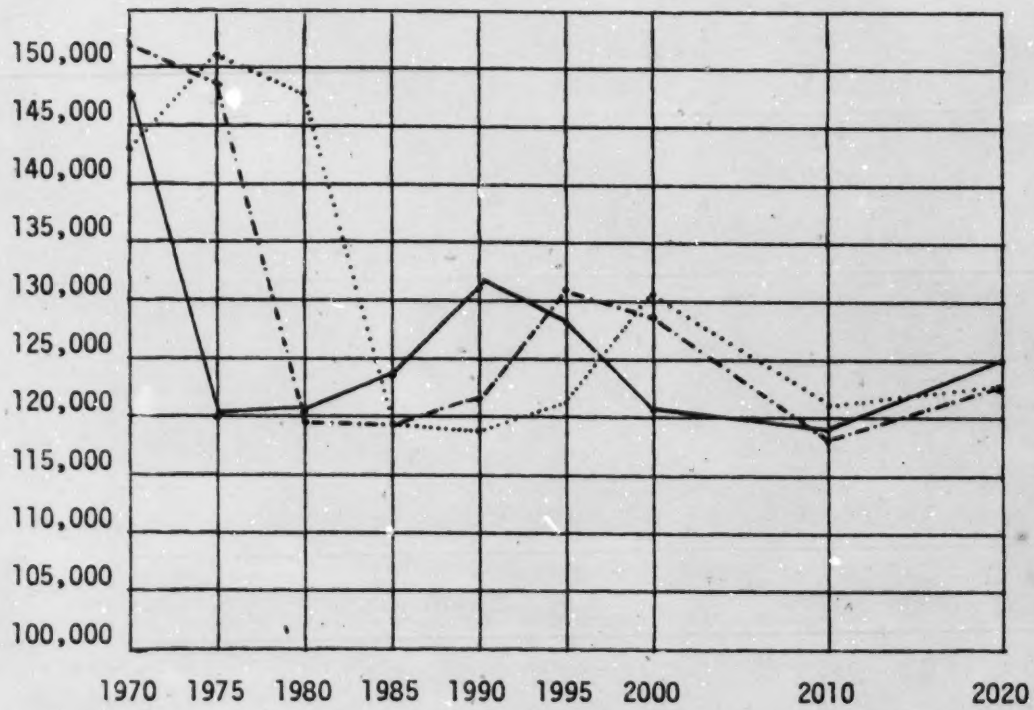
Age Group	1970	1975	1980	1985	1990	1995	2000	2010	2020
5-9	147540	119724	119207	122054	130886	128861	121753	119420	124405
10-14	153248	148259	119521	119016	121850	130674	128667	117538	122941
15-19	143337	151864	147671	119072	118577	121444	130245	121238	118959
	444125	419847	386399	360142	371313	380979	380665	358196	366305

Based on population projections, decline of school enrollments will be the rule for the next twelve years. The major decline has already taken place in the ages 5-9 population. The numbers of children in this age group will

remain stable through the year 2020. As this decline moves through the 10-14 age group and 15-19 age group the enrollments will stabilize and remain relatively constant through the projected period to 2020. Figure 2 provides a visual illustration of population trends for each of these age groups.

Figure 2

Nebraska
School Aged Population
1970-2020



Both Sexes

Ages 5-9 _____

10-14 _._._._._.

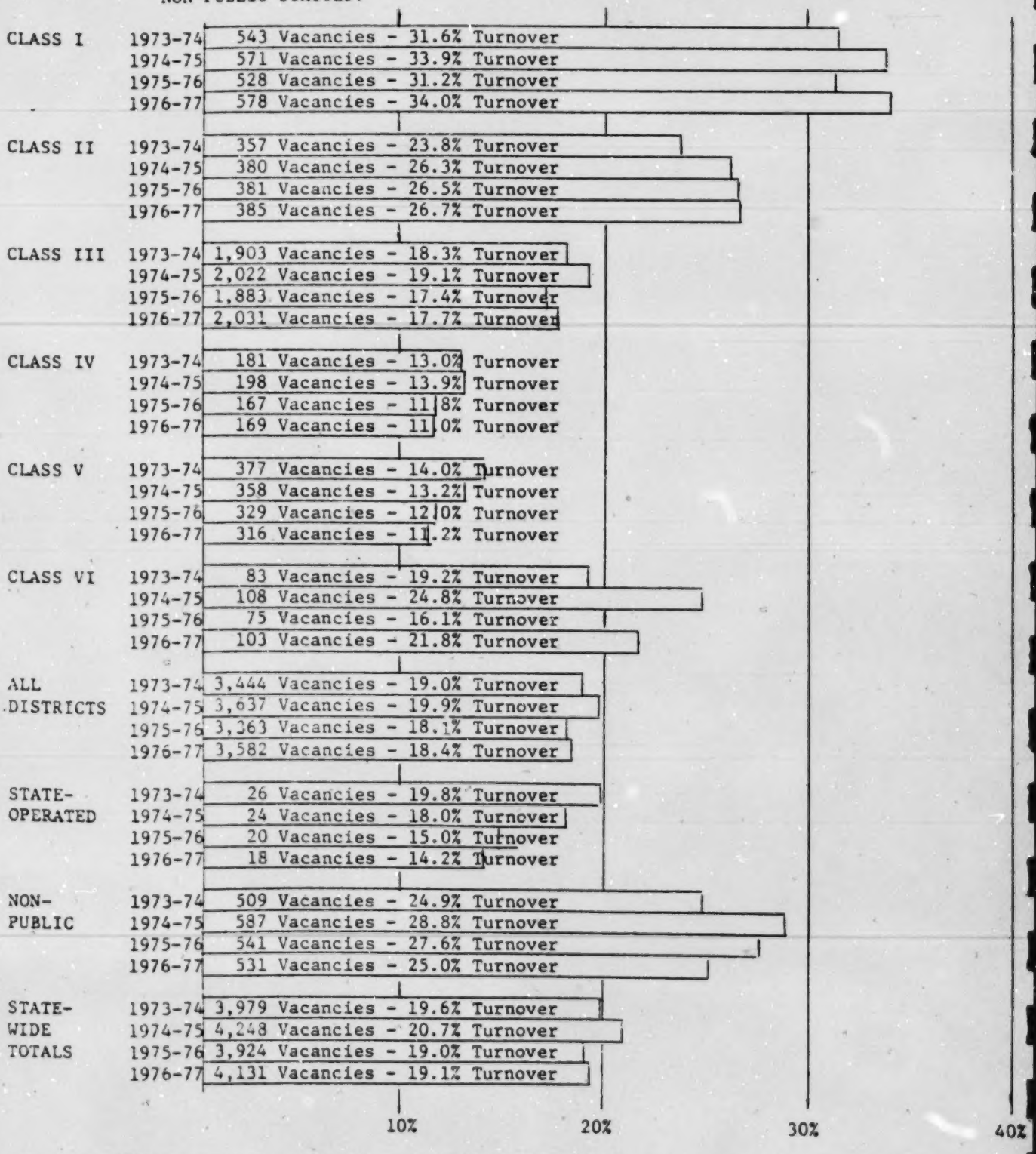
15-19 .....

Teachers and other certified employees, counselors, administrators, curriculum workers, totaled 20,819.30 in 1976-1977. On a state-wide basis, including public and non-public schools, the ratio of certified personnel (teachers, counselors and administrators) to the number of students was 15.1 to 1. If enrollments in the schools follow the population trends and decline by 14% by 1985, one could deduce that 3,262 positions in education will be lost, if the ratio remains 15.1 to 1.

There exists a trend to increase the number of certified personnel to the student enrollment with requirements for schools to provide services for a broader range of the school population. Regulations such as 94-142 have increased the number of certified personnel needed.

Teacher mobility has declined gradually over the past few years. The turnover rate for the state last year was 19.1% with 4,131 vacancies reported. These vacancies do not reflect increases in the total number of teaching positions in the state. Turnover rates are highest in the Class I, II and III school districts with 34.0%, 26.7% and 17.7% respectfully. The graph below illustrates these turnover rates.

Figure 3.--A GRAPHICAL COMPARISON OF THE PERCENTAGE TURNOVER OF TEACHERS* FOR THE 1973-74, 1974-75, 1975-76, and 1976-77 SCHOOL YEARS IN PUBLIC AND NON-PUBLIC SCHOOLS.


CLASS I
1973-74 543 Vacancies - 31.6% Turnover
1974-75 571 Vacancies - 33.9% Turnover
1975-76 528 Vacancies - 31.2% Turnover
1976-77 578 Vacancies - 34.0% Turnover
CLASS II
1973-74 357 Vacancies - 23.8% Turnover
1974-75 380 Vacancies - 26.3% Turnover
1975-76 381 Vacancies - 26.5% Turnover
1976-77 385 Vacancies - 26.7% Turnover
CLASS III
1973-74 1,903 Vacancies - 18.3% Turnover
1974-75 2,022 Vacancies - 19.1% Turnover
1975-76 1,883 Vacancies - 17.4% Turnover
1976-77 2,031 Vacancies - 17.7% Turnover
CLASS IV
1973-74 181 Vacancies - 13.0% Turnover
1974-75 198 Vacancies - 13.9% Turnover
1975-76 167 Vacancies - 11.8% Turnover
1976-77 169 Vacancies - 11.0% Turnover
CLASS V
1973-74 377 Vacancies - 14.0% Turnover
1974-75 358 Vacancies - 13.2% Turnover
1975-76 329 Vacancies - 12.0% Turnover
1976-77 316 Vacancies - 11.2% Turnover
CLASS VI
1973-74 83 Vacancies - 19.2% Turnover
1974-75 108 Vacancies - 24.8% Turnover
1975-76 75 Vacancies - 16.1% Turnover
1976-77 103 Vacancies - 21.8% Turnover
ALL DISTRICTS
1973-74 3,444 Vacancies - 19.0% Turnover
1974-75 3,637 Vacancies - 19.9% Turnover
1975-76 3,363 Vacancies - 18.1% Turnover
1976-77 3,582 Vacancies - 18.4% Turnover
STATE-OPERATED
1973-74 26 Vacancies - 19.8% Turnover
1974-75 24 Vacancies - 18.0% Turnover
1975-76 20 Vacancies - 15.0% Turnover
1976-77 18 Vacancies - 14.2% Turnover
NON-PUBLIC
1973-74 509 Vacancies - 24.9% Turnover
1974-75 587 Vacancies - 28.8% Turnover
1975-76 541 Vacancies - 27.6% Turnover
1976-77 531 Vacancies - 25.0% Turnover
STATE-WIDE TOTALS
1973-74 3,979 Vacancies - 19.6% Turnover
1974-75 4,248 Vacancies - 20.7% Turnover
1975-76 3,924 Vacancies - 19.0% Turnover
1976-77 4,131 Vacancies - 19.1% Turnover
10%
20%
30%
40%

*This report is computed on a head-count basis.

Educational attainment of Nebraska teachers indicates that for the year 1976-1977, 54.1% of the teachers had obtained a BA degree. 20.4% had completed a BA degree plus 15 graduate hours and 18.7% had finished a masters degree. A masters degree plus 15 hours was attained by 4.5% of the teachers and .2% had a specialists degree. Teachers possesing a PhD or EdD equaled .3% of the teaching force. A chart showing a more complete breakdown is depicted below.

Table 2

EDUCATIONAL ATTAINMENT OR ACADEMIC PREPARATION OF NEBRASKA TEACHERS DURING THE 1976-77 SCHOOL YEAR.

	BA (Bachelors)	% of Total	BA + 15 Grad. Hrs.	% of Total	MA (Masters)	% of Total	MA + 15 Grad. Hrs.	% of Total	6-Yr. Ed.Spec	% of Total	PhD & EdD	% of Total	Total
(1)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)
TOTAL PUBLIC DISTS.													
Elementary	5867	58.9%	2127	21.4%	1405	14.1%	216	2.2%	11	0.1%	28	0.3%	9962
Secondary	4484	47.4%	1998	21.1%	2260	23.9%	630	6.7%	27	0.3%	39	0.4%	9459
Both El. & Sec.	10351	53.3%	5125	21.2%	3665	18.9%	846	4.4%	40	0.2%	66	0.3%	19421
STATE OP. TOTAL													
Elementary	42	53.8%	16	20.5%	15	19.2%	4	5.2%	-	-	-	-	78
Secondary	27	55.2%	8	16.3%	8	16.3%	4	8.2%	-	-	1	2.0%	49
Both El. & Sec.	69	54.3%	24	18.9%	23	18.1%	8	6.3%	-	-	1	0.8%	127
NON-PUBLIC TOTAL													
Elementary	898	70.0%	154	12.0%	158	12.3%	31	2.5%	1	0.07%	1	0.07%	1282
Secondary	404	47.9%	128	15.2%	212	25.1%	83	9.8%	-	-	2	0.2%	844
Both El. & Sec.	1302	61.2%	282	13.3%	370	17.4%	113	5.3%	1	0.04%	3	0.1%	2126
GRAND TOTAL DISTS.													
Elementary	6807	60.1%	2297	20.3%	1578	13.9%	251	2.2%	14	0.1%	29	0.3%	11322
Secondary	4915	47.4%	2134	20.5%	2480	24.0%	716	6.9%	27	0.3%	41	0.4%	10352
Both El. & Sec.	11722	54.1%	4431	20.4%	4058	18.7%	967	4.5%	41	0.2%	70	0.3%	21674

Data on the age of the teaching force is not collected on a systematic basis in Nebraska. One study done by the State Department of Education in 1974 estimated that the average (mean) age of elementary teachers was 37 years and 34 years for secondary teachers. A breakdown of the percentage of teachers in each age bracket was not done.[4]

In conclusion the population of students in schools within the state and country will continue to decline substantially for the next 12 years. After that it appears that the population of students will remain fairly stable with only minor year-to-year increases and decreases. The turnover of teachers in Nebraska has decreased gradually over the past few years. For this state the

[4]Interview with Harley Pfeiffer, Director of Statistical Services, Nebraska Department of Education.

turnover is greatest in the smallest school districts. Teachers' educational attainment in Nebraska may be somewhat lower than other states. 54.4 percent have completed a BA degree and 38.8 percent either have a masters degree or have completed 15 hours of graduate course work. The pressure on school officials to make reduction in force decisions is valid to Nebraska and will remain a factor for the next several years.

Chapter III

REDUCTION IN FORCE: A HISTORICAL VIEW

Two topics are discussed in this chapter. In the first section, current practices of reduction in force (RIF) used in business and industry are examined. In the second section of the chpater, consideration is given to the relationship between RIF practices in school districts and statutory provisions for teacher tenure.

Current RIF Practices in Business and Industry

Background. The current practices of reduction in force in business and industry have resulted from the evolving employer-employee relationship. The influences of earlier periods have affected that relationship in a significant fashion. Historically, the dismissal or firing of an employee was often devoid of fairness and characterized by capricious actions. That status reflected the common law basis of the employer-employee relationship in which the employer is perfectly free to fire any employee."[1] The philosophy for dismissal of an employee had undergone little change in the 18th or 19th centuries, except for the establishment of the Federal Civil Service Act of 1883, which initiated protection for Federal employees from unfair dismissal.

Change of a dramatic nature which affected the employer-employee relationship began in the early part of the 20th century. Growing out of the Railway Labor Act of 1926, the National Labor Relations Act of 1935 recognized

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[1]Robert W. Fisher, "When Workers Are Discharged—An Overview," Monthly Labor Review, XCVI (June, 1973), 4.

that employees have the right to organize and bargain collectively. An important result of the National Labor Relations Act, upheld by the U.S. Supreme Court in 1937, was that for employees who belonged to unions "employment tenure was no longer controlled solely by employers."[2]

Laws and court decisions have influenced the termination process for employers and employees. The Labor Management Relations Act of 1947, National Labor Relations Act (amendments of 1947 and 1959), U.S. Supreme Court decisions of 1960 involving the Steelworkers Union, and Title VII of the Civil Rights Act of 1964 (amended in 1972) with its Equal Employment Opportunity Commission have statutorily altered the dismissal or firing process of an employee. In addition to the previously mentioned statutes and court rulings, common law still has an influence on dismissal as pointed out by Fisher:

> Today, discharge under the common law is handled much as it was in the 19th century. It still applies to all employer-employee relationships not specifically governed by statutes. And it applies to those parts of even "statutory" employment relationships where there is no legislative guidance. Under the common law, employers can still fire employees for any reason or for no reason. Employees can quit with or without cause. Employers may sue an employee for damages if his quitting causes losses on materials or similar setbacks. Conversely, the employee can sue to recover damages for "wrongful discharge." The employee cannot win reinstatement under the common law, because one of its tenets is that neither employer nor employee should be made to suffer an undesired relation with the other. In the modern setting, this laissez faire relationship applies mostly to individual contracts for hire and in small, nonunion, private firms. However, this reasoning informs much of employer-employee relations in the United States and other nations.[3]

Manpower Planning. Business and industry in the United States have had problems in the 1970's in the areas of foreign competition and rising costs of raw materials, transportation, and labor. One aspect of the rising cost of

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[2]Ibid., 10.

[3]Ibid., 12.

labor, manpower planning, had not been considered as a serious problem. General growth and expansion in business and industry had diminished the importance of manpower planning. This lack of emphasis on manpower planning brought about a situation described by Donald H. Sweet, director of employment for the Celanese Corporation:

> During that period a lot of staffing was done with little thought about long range utilization of manpower--it was more a question to get what you think you need to get the job done. As a result, many people were often hired to handle a special problem or to handle an over-load and were retained long after the problem was solved and long after their skills were needed.[4]

Manpower planning or rather the lack of adequate manpower planning became a serious problem for many business and industrial organizations which had over-expanded or misplanned in the area of personnel. This situation became serious and particularly acute as the economy slowed in the early 1970's. Reduction of personnel became an obvious solution to the problem. In many instances, reduction of personnel was mandated by the executive management or board of directors. How to accomplish reduction of personnel and what were the obligations between employer and employee were two issues of great importance that concerned business and industrial management.

Seniority. Seniority or "last in first out" has been used as a principle method of achieving reduction of personnel and meeting some of the obligations between employer and employee. Reduction-in-force in business and industry has been primarily influenced by seniority systems; of bargaining agreements

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[4]Donald H. Sweet, "Something New in Personnel: Out-Placement," Personnel Journal, L (July, 1971), 559.

covering 1,000 or more employee approximately 76 percent had seniority provisions.[5] Seniority has been an objective of the union movement to protect the long-term employee from layoffs and

> . . . the principle of seniority has helped to humanize the work place, and allows the worker, to a limited extent, to capitalize his labor, to obain something more than the day's bread in exchange for his humanly limited capacity to produce. Thus "last in--first out" is a reflection of the fundamental equities of workers who devote their life energies to an employer.[6]

Seniority has two principle aspects: (1) benefit status seniority which is the total length of service an individual has in an organization and (2) competitive status seniority which is the length of service an individual has in an organization relative to the length of service of other employees.[7] Benefit status seniority has certain rights and privileges, which are usually financial; and competitive status seniority has certain rights and privileges, such as promotion and protection against layoff, which may or may not be financially based.

Seniority, generally, and competitive status seniority, specifically, have conflicted with some recent antidiscrimination laws such as the Civil Rights Act of 1964. The number of seniority provisions in negotiated contracts and the fervor of seniority proponents have intensified the disharmony between seniority and antidiscrimination laws. The conflict has centered on the advance in the labor market made by minorities and women, which were eroded when reduction-in-force was based on seniority. This point was illustrated by

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[5]William D. Torrence, "Manpower Planning and Reductions in Force: Competitive Status Seniority and EEOC Compliance," Personnel Journal, LIV (May, 1975), 287.

[6]Alfred W. Blumrosen and Ruth G. Blumrosen, "Layoff or Work Sharing: The Civil Rights Act of 1964 in the Recession of 1975," Civil Rights Digest, VII (Spring, 1975), 35-36.

[7]Torrence, loc. cit.

the circumstances involving unions of the International Brotherhood of Electrical Workers and an electric power company in New Jersey in 1974. Contractual agreements of two types existed: (1) a collective bargaining agreement which contained a seniority clause for layoffs and (2) a conciliation agreement with the Equal Employment Opportunity Comission which contained provisions to increase the proportion of minority and women workers.[8]

The conflict between seniority and Equal Employment Opportunity Commission provisions was ruled on by the U.S. District Court of New Jersey on September 5, 1974. The Court found in part:

> At this stage the Court feels that it can go no further than to make the ruling; namely, that to the extent that application of the seniority clause would substantially reduce the relative percentages of those whose hiring is the purpose of the Equal Employment Opportunity Commission (EEOC) agreement, it would be in violation of it. The parties to the collective bargaining agreement are also parties to the EEOC agreement, and to the extent that under the current circumstances the provisions of the two are found to be inconsistent, the EEOC agreement is to prevail.[9]

The unions appealed the decision. On January 30, 1975, the U.S. Court of Appeals, Third Circuit in Philadelphia ruled the following in part:

> This case presents to us, in an unusual procedural context, the difficult questions of determining which of two allegedly conflicting contracts is to dictate the plaintiff employer's course of conduct. We must resolve whether in reducing a company's work force an employer is obligated to adhere to collective bargaining agreement provisions requiring layoffs in reverse order of seniority; or whether the employer is obligated to implement the provisions of a conciliation agreement made with the EEOC to retain among its employees a larger proportion of minority group and female workers. It is agreed among the parties that layoffs in reverse order of seniority will have a disproportionate effect upon a minority group and female workers, as they are most recently

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[8]Ibid., 288.

[9]Ibid.

> hired employees. Despite this consequence, we reverse the judgment of the District Court and hold that the provisions of the collective bargaining agreements must govern in this procedural context.[10]

Laws, court rulings, negotiated agreement provisions, and Equal Employment Opportunity Commission conciliation agreements have changed the relationship between seniority and layoffs or reduction in force. Changes will most likely continue to occur in the future because of the interaction of laws, court rulings, negotiated agreement provisions, and Equal Employment Opportunity Commission concilation agreements. Solutions which avoid a strict confrontation between senior employees and minorities and women were suggested by Blumrosen and Blumrosen and were as follows:

> . . . reductions in hours worked by all employees are preferable to any layoffs. The "four day week," job sharing, or "voluntary layoffs" are preferable first options for such employers.
>
> Where layoffs are necessary the employer must layoff on an alternating or rotating basis if feasible so that the burden of the lesser amount of work is spread among all employees rather than concentrated among minorities and women.
>
> Both the shorter work week and rotating layoff options mean that senior whites and/or males share in the lesser amount of work, but are not subordinated to the claims of minorities and women.[11]

Outplacement. When reduction in force is determined to be inevitable after the trial of such procedures as a four day week or work sharing, some employers have felt an obligation to the displaced employee. That obligation has been met through a process of outplacement which is:

> . . . a systematic "dehiring" process. The organization terminating the employee(s) takes the initiative in supporting the employee's job search (relocation) program. Because the process involves the inverse usage of the traditional "executive search", department resources are usually committed to successful implementation.[12]

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[10] Ibid.

[11] Blumrosen and Blumrosen, loc. cit.

[12] Deborah Meyers and Lee Abrahamson, "Firing With Finesse: A Rational for Outplacement," Personnel Journal, LIV (August, 1975), 432.

Employers have assumed the obligation of outplacement for employees who have been subjected to reduction in force for many reasons. Two key reasons are (1) "the organization's moral obligation to assist the individual in relocating and in reducing the trauma and anxiety normally associated with involuntary termination" and (2) "the knowledge that the organization is committed to making a real effort to help the terminated employee look for suitable work elsewhere can boost the morale of the employee population.[13]"

The 1970 outplacement for the Celanese Corporation has illustrated how an organization can help employees who were subjected to reduction in force. The cut-back was 7.8 percent or 2,000 of 25,600 employees and included all levels of employees. The plan was as follows.

1. All announcements and initial meetings with people to be terminated would be handled by local management.

2. Costs associated with out-placement activities would be a local responsibility.

3. Each unit (plant, lab, etc.) of each operating company (division would designate an individual as Out-Placement Representative. These Representatives could avail themselves of an orientation and procedures developed by Corporate Employment.

4. Corporate Employment would conduct seminars on job hunting for any group of individuals in any part of the organization as deemed necessary.

5. "Problem Individuals" as designated by operating companies could be directed to Corporate Employment for counseling and assistance. "Problem" defined as more senior personnel, people with attitude problems, or simply those whom local management felt would benefit by this exposure.

6. Local Out-Placement Representatives would coordinate their activities with Corporate Employment.

7. Corporate Employment would also be responsible for:

   a. Developing and distributing the "Job Hunting Tips"

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[13] Ibid.

b. Developing a new relationship with select third parties (Employment Agencies and Executive Search Firms) regarding their interest in working with employees being terminated. This was supplemented by "local" third party contacts.

c. Providing listings of appropriate contacts in other corporations for mail campaigns.

d. Developing lists of job openings in other corporations for dissemination to Out-Placement Representatives."[14]

Findings. The review of literature has focused on four aspects of current reduction in force practices in business and industry. The four aspects were the background of the evolving employer-employee relationship, manpower planning, seniority, and outplacement. While it was found that seniority had an overriding influence on reduction in force in business and industry; laws, court rulings, negotiated agreement provisions, and Equal Employment Opportunity conciliation agreements have exerted an increasing influence on reduction in force procedures.

The employer-employee relationship had in its beginnings a considerable influence by common law which continues today. Part of that employer-employee relationship has been the termination process which has grown in complexity and brought about obligations between employer and employee. Moral and morale constraints have instigated outplacement procedures by employers whose employees have been subjected to reduction in force.

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[14]Sweet, op. cit., 560.

RIF and Nebraska Tenure Laws

The termination of a teacher's contract due to financial exigency by a school district in Nebraska falls within the purview of section 70-1254 of the Revised Statutes of Nebraska.[15] Under section 79-1260 of these statutes, an indefinite contract may be terminated for any just cause as follows:

(1) incompetency;

(2) physical disability or sickness of any type which interferes with the performance of duty;

(3) insubordination;

(4) neglect of duty;

(5) immorality;

(6) failure to given evidence of professional growth

(7) or a justifiable decrease in the number of teaching positions.[16]

These statutes are applicable to all classes of school districts in Nebraska.

Nebraska statues differentiate between Class V districts and other districts with regard to procedures for the dismissal of probationary teachers (teachers in their first two years of employment). Kibbon v. School District of Omaha (1976) established the right of Class V districts to terminate a probationary teacher's contract without just cause.[17] Probationary teachers have the same right to a just cause dismissal as teachers with indefinite contracts in all other districts under section 79-1254.02 of the Revised Statutes of Nebraska.[18]

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[15] Revised Statues of Nebraska. Reissue of Vol. V, 1976, pp. 272-73.

[16] Ibid., pp. 277-78. Emphasis added.

[17] Kibbon v. School District of Omaha, 196 NE 293, 242 NW 2nd 634, (1976).

[18] Op. cit., 273.

These statutes would appear to favor Nebraska school districts in cases involving reduction in force dismissal of teachers so long as a hearing is provided for teachers who wished to appeal their dismissal. Hearings involving the dismissal of teachers for just cause are not bound by the structures of procedural due process[19] and are protected by the principle of judicial deference. The principle of judicial deference established the reluctance of the Courts to intervene in cases involving the just cause dismissal of teachers, unless the plaintiff can establish that the action was arbitrary and capricious.[20]

Thus, in carrying out a reduction in force program, it is important that a school system can establish that it is not acting in a arbritary and capricious manner. A bona fide financial emergency must exist, and a rational reduction in force program, with the proper provision for hearings in the event that a teacher may wish to appeal, should be established before any contract is terminated. Even if a financial exigency is obvious and teachers are aware that their contract may be terminated, they still have the right to a hearing upon request.[21] Moreover, the onus is upon the school district to show that it is not acting in an arbitrary and capricious manner.

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[19] Schultz v. School District of Dorchester, 367 F. Supp. 467, (1973).

[20] Fisher v. Snyder, 476 F. 2nd 375, (1973).

[21] Johnson v. Angle, 341 F. Supp. 1043, (1971).

Chapter IV

REDUCTION IN FORCE AS VIEWED BY PROFESSIONAL ASSOCIATIONS

The executive directors of five professional organizations were contacted to obtain position statements of the respective organization on reduction in force. These organizations were the American Association of School Administrators, the American Association of School Personnel Administrators, the Association for Supervision and Curriculum Development, the National Association of Elementary School Principals, and the National Association of Secondary School Principals.

AASA. Although AASA has not adopted an official statement as an organization relative to RIF, the Association has adopted a procedure on RIF for the staff of the Association.

> The Executive Director reserves the right to institute reductions in force affecting individual departments or the entire association staff as conditions warrant. If such action is taken, employees will be given as much notice as possible, but in no case will the notice be less than that stipulated.
>
> If the Executive Director sustains the dismissal action, the effective date of dismissal shall be determined by the employee's employment status: probationary employees - 2 weeks from notice, nonprobationary employees - 4 weeks from notice.
>
> An executive staff member whose contract will not be renewed shall be notified according to the terms of the current contract.
>
> When a reduction in force occurs, it shall be possible for senior individuals to "bump" less senior individuals in parallel or lesser classifications. Parallel classifications are defined as those job classifications having the same recommended salary grade. Lesser classifications are those classifications having lower recommended salary grades. In each of the cases defined above, the individual exercising seniority rights would have to demonstrate that he or she possessed, or had the capability to acquire in a short period of time, the skills necessary to do the job which they wish to move into.

Determination as to whether or not skills are possessed or can be acquired shall be made by the supervisor in consultation with the Deputy Executive Director. All decisions in this area will be final.

Individuals released in a reduction in force shall receive preference for any job opening occuring up to one year after the reduction occurs, provided that the person possesses or can quickly acquire the skills which the job requires. As stated above the determination as to whether skills are possessed or can be acquired will be made by the immediate supervisor in consultation with the Deputy Executive Director.[1]

AASPA. At its Annual Conference in Washington, D.C., in October, 1976, the American Association of School Personnel Administrators adopted a resolution stating its position on reduction in force.

The American Association of School Personnel Administrators recommends that school systems develop equitable policies and procedures for the reduction of school district personnel due to declining enrollments and/or revenues. Due consideration should be given to the following criteria, where appropriate, for the differing types of employees being cut back: qualifications, certification and/or licensing, competency, attendance record, racial and ethnic background, and the length of service of the employees to be reduced.

Recognizing the potential conflict and difficulty with seniority reductions and recent minority hires, this Association endorses as a fair basis of reduction, a ratio provision which adds balance to any affirmative action program. The Association believes that the same ratio of minority to majority employees and female-male employees must be maintained in a school district, no matter how much other criteria place emphasis on length of service. An accomplished affirmative action program of a school district should not be undone because of a necessary reduction in the number of school personnel employed.[2]

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[1]Letter from Peggy Hollinger, Secretary to Dr. Salmon, AASA, February 27, 1978.

[2]American Association of School Personnel Administrators, Proceedings of the Thirty-Eight Annual Conference (Washington, D.C.: AASPA, 1976), 94.

In addition the Florida Association of School Personnel Administrators made a study of problems associated with reduction in force and prepared a report, "Guidelines for Staff Reduction." This document is available from AASPA.

ASCD. The Association for Supervision and Curriculum Development has not adopted a specific formal resolution concerning reduction in force. However, the Association has over the years adopted a number of resolutions which bear upon the issue. These annual resolutions and a statement of conclusions were provided by a staff member of the Association.

(1) "Early childhood education, including both nursery schools and kindergartens, should be established throughout the nation." (1959)

(2) "The programs supervised by local educational agencies and state department of education should meet high standards of time, space and teacher load . . ." (1959, 1960)

(3) "Public education should be extended to include two years of post-high school education . . ." (1970)

(4) ". . . resources available for a student's public school education should be more broadly based and should not depend upon the wealth of the student's parents or neighbors or upon the location of taxable business or industry." (1975.)

(5) "In times of economic stress employment gains made through educational affirmative action should not be lost when attempting to balance the budget." (1975.)

(6) "Professional-Student Ratio: Effective education requires the personal atention of qualified professional personnel. ASCD supports the provision of a staff sufficiently large enough to supply the individualization of instruction necessary to insure the realization of each pupil's potential." (1963.)

(7) "School administrators and boards of education should adopt policies of employment and assignment of certified personnel on the basis of their professional qualifications and personal fitness for the job . . ." (1962.)

From these resolutions it can be inferred that ASCD would be likely to oppose RIF actions which:

--led to reversal of affirmative action through "last hired, first fired" procedures.

--curtailed or eliminated essential elements of a balanced curriculum.

--resulted in wide variation in per pupil expenditures in the state.

--decreased the teacher-pupil ratio below the level required for essen tial individualized instruction.

--resulted in the assignment of personnel on some basis other than professional qualifications or personal fitness.

--led to a retardation of the rate of growth in continuing education programs for adults, curtailment of programs to expand early childhood education or other necessary extensions of educational services to persons not now receiving them.

ASCD's position is apparently dictated by two considerations: equity and educational quality. Equity in this instance means equity of results for students (pupil/teacher ratio, per pupil expenditure) and educators (proportional allocation of positions to women, minorities, etc.). ASCD does not question the right of administrators or school boards to implement RIF's among their employees in response to changing population patterns or declining enrollments per se, provided that equity and quality are protected adequately.[3]

NAESP. The National Association of Elementary School Principals has not adopted an official statement dealing precisely with reduction in force. However, in 1972 the Association passed a resolution dealing with continuity of educational leadership.

Continuity of Education Leadership

NAESP believes that effective leadership is dependent on job security and protection of the rights and personal welfare of the edcuational leader. These elements will provide the school principal with the freedom necessary to carry out professional responsibilities without fear of reprisal from chief school administrators, classroom teachers and members of the community.

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[3]Letter from Steve Hallmark, Government Relations, the Association for Supervision and Curriculum Development, February 3, 1978.

> The Association urges that action be taken by local, state and national administratros' associations to seek legislation that will provide job security for school principals and will prevent the transfer or removal of principals within school districts without just cause or due process. ('72)[4]

NASSP. The National Association of Secondary School Principals has no official position on reduction in force as an organization. However, Paul Hersey of the NASSP staff prepared a publication on RIF:

> While we have no policy on RIF, we would expect as a matter of the First Amendment rights of principals that the full due process procedure be followed in any RIFing action aimed against secondary school principals or assistant principals or other secondary school administrators.[5]

In May, 1978, NASSP issued a publication which provides sample policies and procedures being used by school districts to respond to reduction in force needs.[6]

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[4] Material supplied by Winston E. Turner, Director of Professional Activities, National Association of Elementary School Principals, February 22, 1978.

[5] Letter from Scott D. Thomson, Deputy Executive Director, The National Association of Secondary School Principals, February 6, 1978.

[6] National Association of Secondary School Principals. Reduction-in-Force: Working Policies and Procedures. Reston, Virginia, May, 1978.

Chapter V

SELECTED POLICIES AND PROCEDURES RELATED TO REDUCTION IN FORCE

Some schools are not faced with the problem of reduction in force (RIF). In such instances, district administrators relish the absence of facing layoffs.

> We really are fortunate in that we are not involved with the local organizations in regard to bargaining and so forth. The only thing we have with regard to RIF is a statement in our Board policy which says that should there be a necessity for a reduction in force it would be based on reverse seniority.[1]

Many administrators, however, have not been so fortunate and have adopted policy statements or negotiated agreements with employee units. In Delaware, for example, thirteen of the state's twenty-six districts have adopted both a negotiated agreement and a policy on RIF. While nine of the remaining thirteen districts have adopted a RIF policy, the remaining four have neither a policy nor negotiated agreement.[2]

The West Bend Joint School District of Wisconsin has reconsidered its policy which was originally adopted on August 28, 1972.[3] "Because of court decisions and Union pressure to focus layoffs based on seniority," the district has drafted a revision which eliminates such factors as "overall teaching experience, academic training, ability and performance as a teacher in the District as previously and currently evaluated by the appropriate administrators . . . and past and potential contribution to the educational

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[1]Letter from Eddie Galvan, Director of Personnel, Corpus Christsi Independent School Disstrict, Corpus Christi, Texas, February 27, 1978.

[2]Letter from Thomas Calhoun, Director of Personnel Services, Newark School District, Newark, Delaware, February 24, 1978

[3]Letter from Peter J. Nannetti, Assistant Superintendent, West Bend Joint School District, West Bend, Wisconsin, February 23, 1978.

program of the district."[4] The revised policy calls for layoff based upon length of service in the district and "key assignment to an athletic, co-curricular or other special activity for which a replacement is not then available . . . ."[5]

In the State of Hawaii, which has but a single district, the Department of Education has prepared a fourteen page documnet on "Staff Reduction Guidelines for Certificated Personnel." State law provides for dismissals, due to decrease in number of pupils or for causes over which the department has no control, to begin with those teachers with the least number of years of service (Sec. 297-11). The department has outlined how seniority is to be determined, i.e., time in the Department of Education as a teacher, continuous service time, continuous service within the district where the staff reduction is occurring, and "If there is still a tie, the principal or adminstrator shall use a neutral method, such as flip of a coin, to break the tie."[6]

Generally, when a Board determines that a reduction in force is necessary, the superintendent is authorized to determine the fields of teaching assignments that will lose staff positions, when the reductions are needed, and how they are to be made. Seniority, length of service, most recent continuous service in the district, and similar terms spell out the criteria by which layoffs are to be determined. To avoid reinforcing the seniority concept, the Newark School District of Delaware prepares a serice roster which lists staff in ascending order. On the service roster the teacher most

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[4] Ibid.

[5] Ibid.

[6] Office of Personnel Services, Department of Education, State of Hawaii, "Staff Reduction Guidelines for Certificated Personnel," December 1977, 8.

recently hired is listed at the top of the page to avoid highlighting the data about experienced teachers because the data on newer teachers is relevant.[7]

In many cases a statement on reduction in force begins with a reason for the action, such as a substantial decrease in the number of students enrolled or in revenues. The teachers union may also have reached an agreement with the Board requiring it to consult with the union before any action is taken regarding personnel reduction. Other concerns include such items as the granting of leaves of absence without pay to those staff reduced rather than referring to the action as layoffs. Privileges and restrictions on staff reduced are spelled out to cover insurance benefits, seniority rights, right to seek employment elsewhere, and accrued rights should the person be rehired.

While some documents express specific conditions at great length, others are brief. In a district which has continued to grow, the Board policy stipulates:

> The Board of Education shall first retain those teachers who have the longest period of service in the district and who are qualified to teach in those areas and disciplines to be preserved.[8]

This policy has no further statements on what constitutes longest period of service, i.e., the questions of continuous service, how ties are to be broken, or what rights can be assumed if a person is rehired are not addressed.

Bargaining units have attempted to clarify and protect teachers' rights, primarily through the strength of the bargaining unit.

> Before official action on a reduction of teachers is taken by the Board of Education, it will give notice to the Association of the contemplated reduction and afford the Association opportunity to discuss it with the Employer. As soon as the names of the teachers to be laid off are known, a list of such names shall be given to the Association.

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[7]Letter from Thomas Calhoun, op. cit.

[8]Letter from Patrick G. Pomeroy, Assistant Superintendent, Mesa Public Schools, Mesa, Arizona, February 24, 1978.

> In the event the Association questions the wisdom of the Employer as to the specific teachers: (1) being laid off or not being laid off, or (2) filling vacant teaching positions . . . or not filling such positions, the employer will schedule a conference with Association representatives for the purpose of explaining its rationale. It is understood, however, that the Association's request for this information is reasonable, timely, and intended in good faith.[9]

In this district RIF is based upon seniority, certification, and qualifications. These factors are further defined with time spent as an administrator in the district included in the definition of continuous service. The initial date of work is the first step in seniority date, followed by contract signing date. In case of further duplication, "the professional background of the individuals will be the deciding factor."[10] Although this clause is not further clarified, a statement on qualifications for secondary teachers notes that they must meet minimum North Central requirements necessary for the subject area. The application of the standards of an accrediting agency adds another dimension to staffing reductions.

Qualifications are identified in several ways in Memphis.

> Certification, teaching skills, duties related to assignment, teacher evaluation reports, experience, special abilities, past performance, physical and emotional suitability, curriculum needs, accreditation requirements, coaching assignments, and race if applicable.[11]

These items include qualifications of a broader nature than merely meeting state or regional accrediting agency certification standards. However, a subsequent clause noted that if those factors were substantially equal, then seniority would prevail.

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[9] Letter from Raymond W. Kohr, Director of Personnel, Van Buren Public Schools, Belleville, Michigan, February 27, 1978.

[10] Ibid.

[11] Agreement between The Memphis City Schools and The Memphis Education Association, Tennessee, 1975-1978, 20.

Seniority obviously has many advantages and is the underlying basis for RIF policy and negotiated statements. Furthermore, in some places, a displaced teacher has the "right to displace a teacher with the least seniority in any subject or area of specialization for which that teacher is certified and qualified."[12] The right of seniority also accrues to a displaced teacher who, in most instances, will also be recalled on the basis of seniority for positions for which they are, again, certified and qualified.

Special considerations within a state have ramifications for RIF. In South Carolina there is no tenure law, however, teachers are given a continuing contract. The principle of "last in, first out" is still used as the basic factor in RIF.[13] In Michigan a state law requires "reasonable assurance to 10-month employees that they will be employed in the fall. Failure to receive such assurance amkes them eligible to collect unemploymnet benefits during the summer."[14] While summer is a denial period for receipt of unemployment benefits, the new law will have, in all likelihood, an impact upon the issuance of layoff notices. Rhode Island State law requires that notice must be given on or before March 1 to teachers whose contracts will not be renewed. Furthermore, the law states that teachers may be suspended only for reasons of a substantial decrease in pupil population, with layoff to occur in the inverse order of appointment. Because of serious budget deficiencies (not covered in the law), teachers of the Warwick, Rhode Island,

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[12]Agreement between The Board of Education of the Southfield Public Schools and The Southfield Education Association, Michigan, 1977-1979, 29.

[13]Letter from Rosalie Butler, Personnel Officer, Charleston County School District, Charleston, South Carolina, March 8, 1978.

[14]Letter from Mahlon L. Lantz, Associate Director of Employee Services, Kalamazoo Public Schools, Kalamazoo, Michigan, March 7, 1978.

schools struck for one for fear that the district would discharge teachers to save money by increasing class size. The issue of layoffs for reasons other than decrease in pupil population is now before the courts.[15]

The impact of the federal government upon RIF is also evident. In South Carolina (a state without a tenure law) one district has had to face staffing problems brought about by problems of federal funding.

> We do not have policy statements or written regulations o handle RIF situations. During the past two years we have had a delay in approval of Title I and ESAA (sic) projects which involved rather large numbers of teaching personnel. In order to address that particular problem, the last 100 teachers employed, without regard to assignment or certification, were given contracts which carried the statement that the contract would be void if Title I and ESAS (sic) projects were not approved for the district.[16]

In the absence of a RIF policy the district notified a large number of teachers that their contracts were conditional upon the receipt of federal funds.

In Minnesota reduction in force is prescribed by Minnesota Statute 125.12, Subd. 6b. This code provides for a negotiated unrequested leave of absence. If a negotiated plan is not in effect by the beginning date of a new master contract, the provisions outlined in the next section (Subd. 6b) apply. This sections outlines seniority, recall, and teacher rights. The presence of this sectional apparently holds some attraction.

> Most districts which are in the process of teacher force reductions have not opted to negotiate unrequested leave policies. Teacher representatives in districts which are not faced with reductions have been more receptive to negotiating unrequested leave procedures.[17]

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[15]Letter from John G. Venditto, Assistant Superintendent for Personnel and Employee Relations, Warwick School Department, Warwick, Rhode Island, April 6, 1978.

[16]Letter from Alex H. Raley, Assistant Superientendent for Personnel, Richland County School District One, Columbia, South Carolina, February 27, 1978.

[17]Letter from Bruce L. Johnson, Director of Personnel, Independent School District 196, Rosemount, Minnesota, March 2, 1978.

Johnson also provided a copy of the district's negotiated unrequested leave policies which contained a restrictive clause on seniority. "Seniority privileges may not be asserted and used for the positions of superintendent, assistant superintendents, prinicipals, assistant principals, supervisory personnel and administrators." [18]

Some large districts are faced with declining enrollments at the attendance level rather than at the administrative unit level. In such circumstances inner district transfers are commonly used to meet staffing needs. However, the certification status of a teacher is an ever present consideration and may be a valid reason for the dismissal of a teacher.

> Since Louisiana operates with a state equalization formula for funding teachers' salaries, the inability of a district to provide continued employment to an individual because of certification problems or because of enrollment problems within a school or district is considered a valid reason for releasing a probationary teacher.[19]

The complexities of reduction in force seemingly become greater with examination of the issues. Student population decreases, budgetary restrictions, locally developed statements, variations among states in their respective laws and statutes, and the presence or lack of strong unions, are but a few of the factors that impinge upon staffing considerations.

A brief review of several states' laws on the subject reveals the differences between the approaches to the questions of reduction in force. In West Virginia the rights of teachers are specified as follows:

1. After three years of successful employment, when a teacher holds a professional certificate based upon a bachelor's degree enters into a new contract, it shall be a continuing contract.

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[18] Ibid.

[19] Letter from Michael T. Wells, Supervisor of Personnel, St. Charles Parish Public Schools, Luling, Louisiana, March 7, 1978.

2. "'The continuing contract of any teacher shall remain in full force and effect except as modified by mutual consent of the school board and the teacher, unless and until terminated by a majority vote of the full membership of the board before April first of the then current year.'"

3. "'And provided further, that a continuing contract shall not operate to prevent a teacher's dismissal based upon the lack of need for the teacher's services pursuant to the provisions of law relating to the allocation of teachers and pupil-teacher ratios. But in case of such dismissal, the teachers so dismissed shall be placed upon a preferred list in the order of their length of service with that board, and no teacher shall be employed by the board until each qualified teacher upon the preferred list, in order, shall have been offered the opportunity for reemployment.'"

4. "'Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: immorality, incompetency, cruelty, insubordination, intemperance or wilful neglect of duty, but the charges shall be stated in writing and the employee so affected shall be given an opportunity to be heard.'" [20]

In California the Education code identifies permissable causes for the reduction in number of permanent employees, notification dates, seniority rights, and the right to a hearing.

Reduction in Number of Permanent Employees

44955. No permanent employee shall be deprived of this position for causes other than those specified in Sections 44892, 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his position for cause other than as specified in Sections 44948 and 44949, except in accordance with the provisions of Sections 44955 to 44961, inclusive.

Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in sesson shall have declined below the corresponding period of either of the previous two school years, or whenever a particular kind of service is to be reduced or dicontinued not later than the beginning of the following school year, and when in the opinion of the governing board of said district it shall have become necessary by reason of either of such conditions to decrease the number of permanent employees in said district, the said

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[20]In a letter from C. Edmund Collins, Director of Personnel, Monongalia County Schools, Morgantown, West Virginia, to Arch S. Brown, American Association of School Personnel Administrators, November 4, 1977.

governing board may terminate the services of no more than a corresponding percentage of the certificated employees of said district, permanent as well as probationary, at the close of the school year; provided, that the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to reder a service which said permanent employee is certified and competent to render.

Notice of such termination of services, either for a reduction in attendance or reduction or discontinuance of a particular kind of service to take effect not later than the beginning of the following school year, shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845of this code. In the event that a permanent or probationary employee is not given the notices and a right to a hearing for the as provided for in Section 44949, he shall be deemed reemployed for the enusing school year.

The board shall make assignmens and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render.[21]

In Alaska the statutes dealing with notification of nonretention are relatively brief. The fourth reason given in the law for the nonretention of personnel is a necessary reduction of staff occasioned by a decrease in school attendance.

Section 14.20.140. Notification of nonrentention. (a) If a teacher who has acquired tenure rights is not to be retained for the following school year, the employer shall notify the teacher of the nonrententicn by writing, delivered before March 16, or by registered mail postmarked before March 16.

(b) If a teacher who has not acquired tenure rights is not to be retained for the following school year the employer shall notify the teacher of the nonretention by writing delivered on or before the last day of the school term or by registered mail postmarked on or before the last day of the school term. (Sec. 1 ch 92 SLA 1960; am Sec. 15 ch 98 SLA 1966)[22]

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[21] Material supplied by Denard W. Davis, Administrative Director, Office of Personnel, Merced County Department of Education, Merced, California, March 22, 1978.

[22] Material supplied by Shirley A. Lewis, Personnel Office Manager, Anchorage School District, Anchorage, Alaska, February 23, 1978.

In Colorado the Teacher Employment, Dismissal, and Tenure Act serves as a sufficient guide for some districts which, consequently, have elected not to adopt additional policies on RIF. Section 22-63-112. (3) stipulates:

> A board may cancel an employment contract with a teacher on continuous tenure without penalty to the school district when there is a justifiable decrease in the number of teaching positions. When a justifiable reduction in the number of teaching positions within a particular endorsement area occurs, the contracts of nontenure teachers who are occupying such positions shall be canceled first.[23]

A Florida statute prescribes the procedures a school board is to follow if it is necessary to reduce personnel on continuing contracts.

> (5) Should the school board have to choose from among its personnel who are on continuing contracts as to which should be retained, among the criteria to be considered shall be educational qualifications, efficiency, compatibility, character, and capacity to meet the educational needs of the community. Whenever a school board is required to or does consolidate its school program at any given school center by bringing together pupils theretofore assigned to separated schools, the school board may determine on the basis of the foregoing criteria from its own personnel, and any other certificated teachers, which teachers shall be employed for service at this school center, and any teacher no longer needed may be dismissed. The decision of the board shall not be controlled by any previous contractual relationship. In the evaluation of these factors the decision of the school board shall be final.[24]

In the Dade County Public Schools a negotiated contract with the American Federation of State, County and Munipal Employees carries a clause on layoffs.

> Lay-off, defined, is the separation of an employee for lack of work or funds, without his/her fault or delinquency on the employee's part. Employees shall be laid off in accordance with seniority on the job.[25]

Seniority, without mention of certification, qualifications, job performance, or other factors is the sole determinant.

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[23]Material provided by Ronald W. Hildebrand, Director of Personnel, Weld County School District, Greeley, Colorado, February 22, 1978.

[24]Material supplied by Steve Moore, Assistant Superientendent for Personnel, Dade County Public Schools, Miami, Florida, March 2, 1978.

[25]Ibid.

Lack of funds, decreased student enrollment, or admnistrative decision to cancel courses are three causes for reduction in force of permanent staff in Oregon (342.865).

> (1) Reduction in permanent teacher staff resulting from the district's inability to levy a tax sufficient to provide funds to continue its educational program at its anticipated level or resulting from the district's elimination of classes due to decreased student enrollment or reduction of courses due to adminstrative decision. School districts shall make every effort to transfer teachers of courses scheduled for discontinuation to other positions for which they are qualified. Merit and seniority shall be considered in determination of a teacher for such transfer.
>
> (2) In determining whether the professional performance of a permanent teacher is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the policy of the employing school district and to any written standards of performance which shall have been adopted by the board. [26]

The weight of state statutes prompted several respondents to a request for information on RIF to refer to their respective state's laws. Salmon summed up the reactions to the dominance of state legislation:

> For all practical purpose, reduction in force in New York State is a statutory matter; therefore, the response you would receive from Sodus (Central School District) should be the same as the response you would receive from any other school district in this State, whith the exception of the provisions of the collective bargaining agreement which may go beyond the law. [27]

One Master Agreement contains an item which illustrates how a collective bargaining agreement may go "beyond the law." In Pontiac, Michigan, Item 2 of Section B, Layoff of the Master Agreement reads:

> If two or more teachers have an identical period of continuous service, the following criteria shall be used to determine the first teacher to be laid off:
>
> 2.1 The teacher with the least total teaching experience.

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[26] Material supplied by William I. Williams, Director of Personnel, Eugence Public Schools, Eugene, Oregon, February 23, 1978.

[27] Letter from Hanford A. Salmon, Superintendent of Schools, Sodus Central School District, Sodus, New York, March 6, 1978.

2.2 If the total teaching experience is identical, the teacher with the lowest degree.

2.3 If equality still exists, the teacher with the most days absent during the period of continuous service. [28]

In February 1978 a request for statements, regulations, procedures, criteria for determining seniority, negotiated agreements with the teachers bargaining unit, or similar materials was mailed to 246 districts across the nation. Many of the administrators who responded provided copies of their board policies on reduction in force. A representative sample of these are provided.

The Yonkers Public Schools, Yonkers, New York, has singular provisions for staffing levels as well as for district assistance to teachers who are dismissed in its agreement with the Yonkers Federation of Teachers.

VIII. STAFFING AND TEACHING CONDITIONS

A. Level of Staffing

There shall be a district-wide ratio of not less than fifty professional employees to each 1,000 pupils.

During the term of this agreement, the District shall continue to employ all teachers hired prior to July 1, 1977, except for those in Federally financed programs who were not covered under the former "level of staffing" clause, and except that, whenever in the judgment of the Board of Education it is necessary to transfer such teachers for economic reasons, or reasons relating to reduced programs, change in programs, or closing of schools, such teachers may be dismissed by the district only in compliance with the following procedure:

1. The district notifies the teacher by January 15th, that due to any of the reasons cited above, the district will not employ the teacher in the teacher's certification area beyond January 15th of the succeeding year.

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[28] Materials provided by Tom Everitt, Director, Employee Relations, Pontiac School District, Pontiac, Michigan, on the Board/Teachers Master Agreement, 1976-1978.

2. Teachers who have received the notice described in Paragraph 1 shall be given an opportunity to apply for any vacancy from a list of all vacancies in other certification areas currently available or projected provided to the teacher by the district.

3. The district shall provide assitance to teachers who have received the notice described in Paragraph 1 and who have elected to become certified for a vacancy, in any of the following programs elected by the teacher:

   a) An unpaid leave of absence to terminate no later than the conclusion of the fall semester.

   b) A sabbatical leave if available, such sabbaticals to be limited by the total number of sabbaticals granted under Article 10.

   c) Reimbursement by the district up to $1000. for tuition for courses taken by the teacher towards certification for the vacancy. Such reimbursement to be paid upon receipt of the notice for certification.

4. When the district identifies a vacancy or vacancies for a teacher who has received the notice described in Paragraph 1, and the teacher is not certified for the vacancy, the teacher shall, within ten (10) school days of receiving the notice, notify the district that the teacher shall become eligible for certification for the vacancy by January 15th of the succeeding year and if no such notice is received by the district within ten (10) school days, the teacher's employment may be terminated at the close of the school year. No teacher's employment may be terminated and such teacher shall be entitled to another position in the bargaining unit unless the district has identified a vacancy for which the teacher can apply, provided the assistance described in Paragraph 3, and the teacher has failed or neglected to notify the district of the teacher's election to be retrained within the ten (10) days specified above or unless the teacher fails to provide evidence by September 15th that the teacher is matriculated in a program that will rsult in eligibility for certification for the vacancy by January 15th of the succeeding year. [29]

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[29]Material supplied by John J. Humphrey, Assistant Superintendent for Personnel and Staff Development, Yonkers Public Schools, Yonkers, New York, March 6, 1978.

The policy statement of the Saint Paul Public Schools, Minnesota, is in the "meet and confer" section of the teachers' contract. This requires that staff reduction be discussed with the Federation before administrators take action. One significant action taken by the Board was "that last spring the Board exempted all minority teachers from layoff regardless of seniority."[30] The Saint Paul Board policy has substantial definitions of terms and procedures for seniority listing.

PERSONNEL CHANGES RESULTING
FROM STAFF REDUCTION

(Not a Part of the Agreement)

SECTION 1. PURPOSE: The purpose of this article is to define a systematic procedure for making personnel changes affecting members of the teacher bargaining unit when such changes become necessary because of staff reduction.

SECTION 2. DEFINITIONS: For the purposes of this article, terms are defined as follows:

Subd. 1. "Agreement" shall mean the negotiated agreement between the Saint Paul Board of Education and the Saint Paul Federation of teachers providing terms and conditions of professional employment for Saint Paul teachers.

Sudb. 2. "Teacher" shall have the meaning prescribed in Article 3 of the Agreement with the following modifications:

2.1. Professional employees who are certified as teachers, were previously employed in positions outside the teacher bargaining unit, and by reason of unrequested demotion fall within the definition prescribed in Article 3 of the Agreement, shall be considered as teachers pursuant to MS. 125.17.

2.2. Substitute teachers shall be excluded from the provisions of this article.

2.3. Acting incumbents shall be excluded from the provisions of this article, except that teachers contracted for regular employment shall have any such acting incumbent time included in calculating seniority for any personnel changes covered by this article which occur after their contract assignment date.

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[30]Letter from James C. Sargent, Director of Personnel and Staff Relations, Saint Paul Public Schools, Saint Paul, Minnesota, March 2, 1978.

Subd. 3. "Acting Incumbents" are teachers contracted to fill a specific temporary vacancy for a named member of the teacher bargaining unit.

Subd. 4. "Qualified" shall mean that teachers are properly certificated in that subject area or department.

Subd. 5. "Board" shall mean the Board of Education as defined in Article 3 of the Agreement.

Subd. 6. "Superintendent" shall mean the Superintendent of Schools as defined in Article 3 of the Agreement.

Subd. 7. "Involuntary Transfer" shall mean an involuntary change of assignment by reason of staff reduction which is other than a demotion and which involves a relocation to another building. It shall exclude all assignments which are essentially itinerant.

Subd. 8. "Demotion" shall mean a change of assignment by reasons of staff reduction which results in a lower annual or monthly contract salary.

Subd. 9. "Layoff" shall mean an involuntary termination of employment by reason of staff reduction with loss of compensation and benefits except as provided herein.

Subd. 10. "Department" shall mean teaching positions throughout the school district which require the same certification.

Subd. 11. "Program" shall mean a group of teaching positions established to accomplish a specific goal or objective, which group of positions is budgeted or funded in part or wholly separate from the general budgeting or funding for teaching positions. A program may contain one or more departments.

Subd. 12. "Seniority" shall mean a numerical ranking based upon the total length of service within the Saint Paul Public Schools. Accumulation of seniority shall commence upon the first day of regular employment and shall continue until termination of the employment of the teacher, subject to the further provisions of this article. Except as specifically provided within this article, seniority shall not accrue to substitute teachers and acting incumbents. Further:

12.1. Time spend on leave of absence shall not be used to compute seniority unless so specified within the provisions of the particular type of leave involved, except that time spent on compensable leaves and military leaves as required by M.S. 192.261 shall apply.

12.2. Seniority shall not apply to extracurricular and hourly assignments nor to any positions assigned in addition to the teacher's contractual assignment.

12.3. Seniority shall accumulate to a maximum of one year of credit during any calendar or school year of employment. The normal school year as defined in the Agreement shall comprise a full year of seniority and each month of service less than a full year shall comprise one-tenth of one year of seniority.

SECTION 3. PROCEDURES--SENIORITY LISTING:

Subd. 1. The district shall compile and maintain a listing of seniority of teachers in accordance with the provisions of this article.

Subd. 2. The listing shall be based on years of service to the nearest one-tenth of a full year.

Subd. 3. When this procedure produces identical rankings for two or more teachers, the teachers shall be ranked by employment commencement dates. In the event that two or more teachers continue to have identical rankings after such procedure, a random assignment of ranking shall be made.

Subd. 4. A copy of the completed seniority listing shall be posted in each building. A copy of the seniority listing and copies of updates to the listing shall be submitted to the Saint Paul Federation of Teachers.[31]

One district has a policy that provides for the retention of a less senior teacher who is more qualified for an assignment.

PERSONNEL - Professional
Permanent Personnel - Reduction in Force
- Separation

As specified in the Illinois School Code, Article 24-12, when the Board deems it necessary to decrease the number of teachers employed by the District, or to discontinue some particular type of teaching service, written notice shall be given the teacher by registered mail at least sixty (60) days before the end of the school term, together with a statement of honorable dismissal and the reason therefor. The Board shall first remove or dismiss teachers who have not entered upon contractual continued service, before removing or dismissing any teacher who has entered upon contractual continued service and who is legally qualified to hold a position currently held by a teacher who has not entered upon contractual continued service.

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[31]Ibid.

In the event of the dismissal of teachers who have entered upon continued contractual service, length of continuous full-time service with the District will govern unless it is determined that a teacher(s) with equal or less continuous full-time service is more qualified for the assignment or assignments remaining. If the teachers in question have the necessary certification and required State academic qualifications, then the following criteria shall be applied in determining qualifications:

1. Experience teaching in the District (regardless of current assignment) in the following grade level classifications:

   a. K-6
   b. 4-8
   c. Special instructional areas

   This criterion shall normally govern unless it is determined that the teacher(s) with less continuous service is overall more qualified on the basis of the remaining criteria set forth below:

2. Performance evaluation for at least the last five (5) years;

3. College or university credit in areas of the assignment;

4. Prior relevant teaching experience outside the District in the grade level classifications specified in 1. above; and

5. Participation in District committees, sponsoring or participating in special programs or activities, or representing the District in programs or workshops sponsored by other schools, educational agencies, or educational organizations.

The determination of the qualifications of teachers for the assignment or assignments remaining shall not be done in an arbitrary or capricious manner. If a teacher with more District seniority than a teacher who is retained is dismissed in a reduction in force, the Board will, upon request, provide said teacher with its rationale in writing.

Teachers who have entered upon contractual continued service and who are on an approved leave of absence shall be subject to the foregoing Reduction in Force policy.

If the Board, within one (1) year of a reduction in force, increases the number of teachers employed by the District or reinstates a position discontinued, the positions thereby becoming available shall be tendered to the teachers so removed or dismissed in the reverse order of their removal or dismissal so far as they are legally qualified to hold such positions. [32]

The Westside Community Schools, Omaha, Nebraska, has adopted a lengthy policy which covers certificated and classified staff members.

REDUCTION OF EMPLOYEES

In the event that conditions such as budgetary limitations, program changes, and enrollment decreases necessitate a reduction in the number of employees, the following policy shall be administered by the superintendent.

In implementing a staff reduction plan, the superintendent will reduce the number of employees in a manner so that a balance may be maintained of educational programs, personnel, and expenditures. The criteria used will be applied in a consistent manner on a district wide basis and will not produce disproportionate layoffs of any minority group.

The superintendent will annually determine the number of employment positions for each school year, in accordance with federal and state laws and based upon the instructional program and edcuation services for the students. If this determination results in a reduction of present employees, the superintendent will proceed in administering the following plans.

STAFF REDUCTION BY ATTRITION OR EMPLOYMENT MODIFICATIONS

The superintendent will first implement procedures which will result in staff reduction, but which will not cause mandated termination of employment. The superintendent will:

1. Accept and not replace the vacancies caused by resignations and retirements.

2. Administer an early retirement program for administrative and certified employees who so request.

3. Shorten the contract year for some selected certified positions and reduce some time schedules for classified staff.

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[32] Material supplied by Robert B. Hultgren, Director of Personnel Services, Elementary School District 64, Park Ridge, Niles, Illinois, February 27, 1978.

4. Institute a procedure for limited time employment and assignments.

5. Institute a procedure for retraining employees whose positions will be terminated, but whose skills would require a minimum of retraining to qualify for other vacant positions. Certified employees, whose positions will be terminated, will be considered for other positions in which they are endorsed and in which there are vacancies.

6. Participate in a cooperative program with neighboring school districts to assist staff members, being considered for termination, find employment opportunities in other districts.

STAFF REDUCTION WITH MANDATED TERMINATION

If further reduction in staff positions is necessary, the superintendent will administer the termination procedures as follows:

For the certificated staff members, the order of criteria for employment termination involves:

Elimination of courses due to decline of student enrollment.

Elimination of educational services and courses which are determined supplementary or additional but not primary to the instructional program of students. The eliminated services would necessitate the reduction of employment positions, as associated, with the program.

Within this process, if a reduced program or course offering results in the elimination of some, but not all the positions, the additional factors for termination would be:

1. Lack of certification for endorsement for the assignment presently held.

2. Evaluation of job performance.

3. Part time employment.

4. Preparation, training or experience in the assigned responsibilties.

5. Seniority, defined first as the total number of years employed in the district in the endorsed area, and second, as the total number of years assigned to the building or department.

6. Total job responsibility, including such functions as extra duty assignmenets.

For the classified staff members, the order of criteria for employment termination involves:

1. Elimination of classified services which support educational programs that have been omitted or reduced.

2. Elimination of classified positions which are ranked lower in priority of necessity, as determined by the superintendent.

3. Lack of job skills for the assignment.

4. Training and experience for the assignment.

5. Evaluation of the job performance.

6. Seniority.

7. Assignment.

PROCEDURE FOR TERMINATION

The superintendent shall provide written notice of dismissal to the affected employees in compliance with the state statute, 79-1254 for the certificated staff, and at least 30 days prior to the actual date of dismissal for the classified staff.

EMPLOYEES ON RECALL

Former employees who have been terminated because of the reduction of staff, except for those terminated as a rsult of job performance, shall for a period of two years receive priority consideration for reemployment. Former employees on recall will be contacted in reverse order of their layoff with respect to the positions for which they are qualified.

When a former employee receives notification of available employment, the staff member will have ten days to advise the superintendent if the employment is accepted. If the employment is not accepted, the staff member will not remain eligible on the recall list.

The period of absence when an employee is placed on recall shall be considered as an unpaid leave of absence without compensation and not including fringe benefits.

EMPLOYMENT OF NEW PERSONNEL

New staff members shall not be employed if there are district employees on recall, unless those on recall do not have proper certification and qualifications to fill the vacancies.[33]

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[33]Material supplied by William Hoyt, Assistant Superintendent, Westside Community Schools, Omaha, Nebraska.

The Bellevue Public Schools, Bellevue, Nebraska has developed an extensive set of administrative regulations to accompany the Board policy.

REDUCTION IN FORCE

Board Policy

Reductions in certificated staff which may be required due to decreasing enrollments, limited financial support, changing programs or other factors, will be accomplished, when possible, through the normal procedures of resignations, retirement, leaves of absence and other methods of attrition of staff.

In the event that it becomes apparent that the necessary staff reductions may not be accomplished through the normal attrition of staff, the Superintendent will recommend to the Board of Education the names of those individuals to be terminated under the reduction in force provisions of the continuing contract law.

The selection of personnel for termination shall be done in the inverse order of their length of uninterrupted service with the district, but with consideration given to (1) program to be offered, (2) areas of certification and endorsement which may be required to maintain accreditation, (3) state and federal regulations which may mandate certain employment practices and (4) special qualifications that may require scientific training and/or experience. In the absence of the above considerations, length of uninterrupted service shall be the sole determining factor.

Those employees who have been terminated through a reduction in force shall be offered reemployment with the district for a period of two years following the date of termination when vacancies occur for which they are qualified. At reemployment, the employee shall resume the position on the salary schedule or range that is dictated by his/her experience and training, except that the length of time represented by the break in service shall not be included as service with the district.

Administrative regulations implementing the above policy statements shall be developed by the Superintendent of Schools.

REDUCTION IN FORCE

Administrative Regulation

When it has been determined that certificated teaching and/or administrative staff members must be terminated due to reduction in force, the following regulations shall apply:

1. A list of certificated staff members who are paid from the teacher schedule and the administrative ranges shall be prepared annually as of January 1, in order of length of uninterrupted service with the district. Leaves of absence for any

reason, when officially granted by board action, shall not be considered as interruptions in service. The seniority list shall include the following data for each employee:

(a) Name and Building.
(b) Current assignment, including for tachers, grade level and/or subject.
(c) Date of beginning of uninterrupted service.
(d) Certification and endorsement held.
(e) Highest degree held plus hours of college credit beyond, if any.

2. The data referred to in the above paragraph shall be as maintained in the district's personnel files as of January 1, each year. It is the repsonsibility of each employee to furnish any information concerning hours of credit, certification and endorsement which would update the records.

3. In the event that the board acts to terminate any certificated employee through reduction in force provision of the continuing contract law, the seniority list will become the official list from which the determinations of seniority will be made. Individuals may appeal their placement upon the list through the regular appeal channels. Date of first employment will be that as established by the Personnel Action Form. The seniority list will have no other use than that of determining seniority for reduction in force provisions of the continuing contract law.

4. In the event that two or more employees have the same beginning employment date, the date of signing the confirmation of employment shall take precedence, next priority will be given to the date of signing the contract. In the event that ties still exist, the highest seniority will be given to those whose salary, as established by the daily rate of pay, is the highest. In the event ties still exist after the procedures above, seniority will be determined by lottery in the presence of the employees involved.

5. Following enrollment projections, program determinations and financial estimates for the ensuing year, and not later than January 15, staffing allocations will be provided to the building principals.

6. Building principals, by February 15, and after reviewing the known possibilities of resignations, leaves of absence and retirements in their respective buildings, will certify to the Personnel Department any names of individuals, who, after consideration has been given with respect to (a) certification and endorsement required, (b) state and federal regulations, and (c) special qualifications required, are in excess of their staffing allocations and rank lowest on the seniority list.

7. The Personnel Department will review the lists of excess positions provided by the building principals and compare with

known vacancies in an effort to determine whether any required reduction can be performed through normal attrition or not. If the decision is that the reduction cannot reasonably be expected to be made by attrition, any existing vacancies will be offered to those with highest seniority among the individuals on the lists of excess positions and transfers arranged when possible.

8. When the reduction in force cannot be accomplished through normal attrition, the Superintendent, at the first meeting of the Board of Education in March will recommend to the Board of Education the listing of persons who shall be notified of the termination of their contract due to a reduction in force. Following approval by the Board of Education, each affected employee shall be notified in writing by March 15 of the board action and shall be provided a seniority list for examination.

9. During the period from March 15 to April 15, each affected employee shall have the opportunity to appeal the termination. No appeal will be sustained if the result would be to provide the appellant with a promotion and/or an increase in salary.

10. Individuals who are terminated because of reduction in force shall be automatically placed on a recall list in order of seniority for a period of one year commencing with the new fiscal year following the date of termination with the option to be continued on the list for a second year. To remain on the list for a second year, the employee must so notify the Personnel Department prior to the expiration of the first year on the recall list. Individuals will not be continued on the recall list beyond the end of the second fiscal year.

11. Individuals on the recall list shall be given the first opportunity for reemployment when vacancies occur for which they are qualified on the basis of seniority and their qualifications as of the date of notification of termination. Those obtaining higher qualifications while on the recall list shall be considered for a position higher than the one terminated from only if there is no one on the recall list who is eligible and interested in the position.

12. Notification of a vacancy shall be made to the highest eligibles on the recall list by telephone, if possible, with confirmation in writing. The individual will have two weeks to respond. No response shall constitute a refusal. In the event of a refusal, the position will be offered to the next highest eligible, continuing until the position has been offered to all eligibles on the recall list. If no individual on the recall lists accepts the position, the Personnel Department may fill the vacancy from its list of applicants. in the event any individual rejects more than one opportunity for reemployment during the second year, the individual shall be dropped from the recall list. Once an individual has accepted reemployment, requests for change of assignment must be made through the transfer policies of the district.

13. For the purpose of establishing seniority only, individuals who are reemployed from the recall list will continue the date of employment as that which was established when first placed on the recall list.

14. Individuals on the recall list shall be given first consideration as substitute teachers.

15. In case of termination the following opportunities concerning fringe benefits will be available to the affected individuals.

(a) Accrued annual leave and termination pay. One of two options may be selected. first, the indiviual may elect to maintain his/her leave balance with the district, and therefore not receive severance pay earned. Should the individual return to employment, the leave earned at the time of termination will be credited and carried forward. In the event an individual selects this option and for some reason does not return as intended, the severance pay earned will be paid either at the time the individual requests removal from the recall list or at the end of the two year recall period as appropriate.

Second, the individual may elect to collect severance pay due to the time of termination. With this option the previous leave balance is cancelled. Should the affected employee return to work, leave accrual starts with the date of return to work.

(b) Health Insurance. Persons terminated may continue while on the recall list to participate in the Group Health Insurance by providing the established rate of monthly payment one month in advance to the Central Office Payroll Department.

16. In the event of reemployment, the individual will be placed upon the salary schedule or ranges in the same position that he/she would have been had he/she not been terminated, excepting that the period of time while unemployed will not be recognized for vertical movement on the schedule.[34]

The Board policy of Adams County School District No. 12 of Denver, Colorado, contains several criteria to be used before seniority is applied in staff reductions.

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[34]Material supplied by Harold Baker, Director of Personnel, Bellevue Public Schools, Bellevue, Nebraska, March 1, 1978.

Staff Reductions

10.1 The Superintendent or his designee shall notify the teaching staff on or before February 15 that staff reductions may be necessary. The Superintendent shall make available all pertinent information supporting the anticipated need to reduce staff. Prior to a final decision, the Superintendent will meet with representatives of the Association to discuss the proposed staff reductions.

10.2 Pupil-teacher ratios, accreditation requirements, district goals, and State Department of Education standards shall be used when determining the need for staff reductions.

10.3 When the Board of Education, consistent with state law, deems it necessary to reduce the certified staff, the following items will be considered in the reduction process in the order they are listed:

10.3.1 Compatability with staff and program needs.

10.3.2 Teaching assignments, educational preparation and training, merit and fitness, skill and successful teaching experience.

10.3.3 Certification status.

10.3.4 When the foregoing considerations are substantially equal, seniority shall prevail using the following criteria in the order listed:

10.3.4.1 Years of service in the District.

10.3.4.2 Length of service in current assignment.

10.3.4.3 Number of years teaching experience in current area of certification.

10.3.4.4 Total number of years teaching experience.

10.3.4.5 All other qualifications being substantially equal, use inverse order of employment.

10.4 Normal attriction shall be considered prior to any staff reductions.

10.5 At no time shall there be reduction of staff on full-time contracts if the District continues to employ part-time certified faculty.

10.6 If further reductions are necessary after fulfilling the staff reduction provisions listed above, reductions of full-time staff, including administrators and other employees, shall be considered.[35]

The "Administrative Implemental Procedures" developed by the Wichita Public Schools, Kansas, place great emphasis upon employee evaluation. These procedures also contain types of information to be given to the terminated employee (see 7: a-d).

STAFF REDUCTION BY TERMINATION AND RECALL

BOARD POLICY:

THE STAFF MAY BE REDUCED BY TERMINATION OWING TO A DECREASE IN THE NUMBER OF PUPILS, CAUSES OVER WHICH THE BOARD HAS NO CONTROL, AND/OR BOARD-APPROVED MODIFICATION OF EXISTING PROGRAMS. STAFF MAY BE RECALLED AS CONDITIONS PERMIT.

Administrative Implemental Procedures:

1. The greatest possible reduction in staff shall be accomplished through the normal turnover.

2. The reduction may be applied to all certificated personnel or to only some group thereof. The reduction shall be applied to the largest group which may be reasonably considered. The Superintendent, subject to Board approval, shall determine the group from which the reduction shall be made.

3. Within the specified group, employees shall be selected by the Personnel Services Division for termination in the following order:

   a. Employees in their first three months of current employment for whom no evaluation has been submitted to the Personnel Services Division.

   b. Employees within their first two years of employment who are currently absent and have exhausted their accumulated temporary leave.

   c. Employees who, according to their most recent evaluation, are performing their responsibilities in less than satisfactory manner in one or more of the five major areas on

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[35]Material supplied by Harvie L. Guest, Director of Organizational Development and Personnel, School District No. 12, Adams County, Denver, Colorado, March 2, 1978.

the evaluation form. Prior evaluations may be considered for those employees who have been recently transferred to positions with significantly different responsibilities.

d. Employees who by state certification standards are only provisionally qualified in their assigned positions.

e. Employees who are employed on less than a full-time contractual basis, starting with those with the least equivalency of a full-time contract. However, this provision shall not be applied in such a manner as to adversely affect the balance of the staff with regard to handicap, race, sex, or age.

f. In the event that performance of responsibilities is judged to be the same for the remaining employees within the specified group, selection will be based on length of service during current employment dating from the first day on duty. However, this provision shall not be applied in such a manner as to adversely affect the balance of the staff with regard to handicap, race, sex, or age.

g. In the event that two or more employees are equally eligible for selection for termination, the order shall be decided through applying unbiased procedures developed and directed by the Research, Planning, and Development Services Division.

4. Only those evaluations forwarded prior to an earlier date specified by the Superintendent will be considered in the implementation of this policy.

5. Any individual(s) within the specified group who is on or has requested an extended leave shall be eligible for termination under the conditions set forth herein.

6. As employees are selected for termination, their names shall be placed on a list in the order of their selection.

7. Any employee who is to be recommended for termination shall be notified in writing at least fourteen (14) days prior to the proposed effective date of such termination. Such notice shall include:

   a. The basis for the initial decision for staff reduction,

   b. The reason(s) for the selection of the individual,

   c. A copy of this policy,

   d. Notice to the individual of an opportunity to respond.

8. After implementing such a reduction procedure, the list of names of terminated employees shall be maintained for two years.

   a. Any person who has been so terminated shall no longer be considered an employee and shall have no employee rights or benefits.

   b. Any person who has been so terminated may retain membership in the Board health insurance group for the period of time allowable by the insurance company. However, the Board shall make no contribution and the person must make advance arrangements for payment of dues with the Business Services Division.

   c. It is the respsonsibility of the listed terminated employees to keep the Personnel Services Division informed of their current address and any changes in teaching qualifications.

   d. If a vacancy occurs within two years for which an person named on the list qualifies, the position shall be offered to the person whose name was most recently placed on the list and who qualifies for such vacancy. The usual employment procedures will be followed in determining fitness for reemployment.

   e. If any person named on the list waives recall rights in writing, fails to accept recall to a position for which the person is qualified, fails to respond within ten (10) days to a recall notice sent to the latest address which the person has furnished to the Personnel Services Division, or fails to report for duty in an accepted position, the name of such person shall be removed from the list and such person shall have no further recall rights.

   f. Any person who is recalled shall regain all employment benefits to which he/she was entitled at the time of termination. However, no benefits may be accrued during the period of unemployment for conditions which have been made in the interim.[36]

The policy of the Kansas City, Kansas, District No. 500 specifies teachers retained must be qualified both in the disciplines to be taught and the activities to be sponsored. The policy also restricts certain leaves, including voluntary military service, from counting as active service.

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[36]Material provided by Personnel Services Division, Wichita Public Schools, Wichita, Kansas.

KANSAS CITY, KANSAS PUBLIC SCHOOLS - USD #500

Professional; A. Permanent Personnel; O. Separation; a. Staff Reduction

(1) Reduction of instructors in the district as a whole due to a decrease in the number of pupils or for other causes over which the board of education has no control shall begin with those instructors with the least number of years of active service under contract in USD #500. Retained shall be those instructors with the longest active service under contract in USD #500 provided that they are certified and qualified in those activities and disciplines to be continued.

(a) For purposes of this policy active service under contract shall include all active full-time contracted teaching service; all time absent from duty under policy 4151.1 (sick leave); time absent from duty under policy 4152.5 to the end of the current school year only (health leave); all absence due to military service under policy 4152.4 when absence is due to involuntary service.

(b) Active service under contract shall not include time absent from duty under policy 4152.2 (professional leave); 4152.3 (extended maternity leave); 4152.4 (2) voluntary military service; 4152.3 (1) adoptive leave.[37]

The Grand Forks Public School District #1 of North Dakota notes in its procedures for termination that Board approved military service does not reduce seniority.

TERMINATION (procedures)

A certificated contracted employee's contract may need to be terminated because of declining enrollments, program changes, reductions and other factors determined by the School Board. Where attrition does not accomplish this purpose, the following guidelines are suggested:

1. The necessary staff reductions shall be made known at the earliest possible date but not later than April 1st.

2. In the event of staff reductions an employee's contract shall be terminated pursuant to current statutes, fair dismissal procedures and district procedures established herein.

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[37]Material suppied by Carter L. Burns, Assistant Superintendent in Charge of Personnel, Public Schools, Kansas City, Kansas, February 24, 1978.

3. In contract termination, the district shall proceed to determine seniority on the basis of program area and number of years of continuous service in the district, as the first determinant. (Notes: date of initial work - note date of first contract shall be the time from which seniority is counted, fractional years of service sahll be counted as fractional years; Board approved leave, military service and other approved interruptions in service shall not reduce seniority achieved.)

4. When seniority is equal for two or more employees, the school district shall use the following criteria in the order of their appearance:
   a. North Dakota certification.
   b. Regulations of accrediting associations in which the school district holds membership.
   c. Major extra-curricular assignments.
   d. Special and/or advanced training;
      Prior experiences in other districts; and,
      Judgment based on observation and written evaluation by the Superintendent's designate.

5. Any certificated contracted employee who has been terminated due to discontinuance of position shall have reemployment rights in vacant positions for which he is qualified, with priority to be determined as outlined in paragraph 4 herein. This right to reemployment shall exist for a period of fifteen (15) months from the date of contract termination (the last day of the current school year in which the employee is terminated) provided the individual terminated files written notice on or before May 15th of the school year in which the employee is terminated with the Director of Personnel indicting that he is available for a position and maintaining a current mailing address. If a terminated employee is offered reemployment and rejects that offer, such rejection shall constitute a waiver of this right to reemployment.[38]

Salt Lake City School District has a brief policy on reduction of staff under termination procedures refers to two items of significance--the Equal Employment Opportunity Act of 1972 and the replacement of teachers by aides.

REDUCTION OF STAFF

7-1 It is the policy of the Salt Lake City School District to reduce staff in proportion to its loss of students and in consideration of its revenue. The Superintendent of Schools is

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[38]Material provided by Grand Forks Public School District #1, Grand Forks, North Dakota.

required each year to propose plans for appropriate reductions. Such plans are to be approved by the Board of Education before implementation. As far as possible, reduction of staff shall be achieved by attrition.

TERMINATION PROCEDURES

7-1 Termination for Reduction of Staff

7-1-1 Each teacher in the district shall be assigned an employment number which will indicate total legnth of service in the district.

7-1-2 Overstaffed positions shall be identified by subject and by grade for the entire district. Teachers shall be listed by date of service in the district, by subject areas and by grade. Necessary termination will be made in reverse order by date of service. In cases where more than one person's date of service is the same, educational qualifications by salary lane placement are the same for two or more teachers, termination shall be decided by a drawing by lot in the presence of two persons representing administration, two persons representing the Association and two disinterested persons.

7-1-3 Implementation of these provisions shall give consideration to the Equal Employment Opportunity Act of 1972.

7-1-4 Teachers who have not received notice of termination by at least 60 days before the end of the school year shall be guaranteed continued employment for the ensuing school year.

7-1-5 No teacher newly hired who has not given service in the district shall replace a teacher who has been under contract, whose work has been satisfactory, and who is qualified for a given position.

7-1-6 Each teacher performance will be considered satisfactory unless there has been an evaluation by established procedures to the contrary.

7-1-7 The district will not replace teachers by employing aides. When aides are used for fractional positions the Association will be consulted.

7-1-8 Any change from current practice of staffing on mid-year enrollment projections shall be made through the governance procedure. After contracts have been issued for the following year, termination shall be for unsatisfactory performance only.

7-1-9 Teachers who are reemployed following termination due to reduction of staff shall be placed on the next step and the same lane of the salary schedule they were on prior to termination unless in the intervening time they have qualified themselves for a lane change, in which case they shall be placed on the higher lane.

7-1-10 Sick leave and personal leave benefits which have been accrued by an employee at the time of termination due to reduction of staff shall be reinstated to the credit of the employee upon his/her return to employment in the district.[39]

In Hammond, Indiana, special provisions are made for involuntary transfers within the district, including one that allows a teacher to take accumulated seniority in a building from the transfrrring to the receiving school building.

INVOLUNTARY TRANSFERS:

A. It is recognized that the frequent transfers of teachers from one school to another is disruptive of the educational process and interferes with the optimum teacher performance. It is therefore agreed as follows:

Section 1: When a reduction in the number of teachers in a school is necessary and none of the available existing staff has applied for a voluntary transfer, then the existing staff may volunteer for the transfer and for the purpose of Section 2 of this paragraph will be considered as involuntary transferees. If there are no such volunteers, then the teacher with the least building seniority will be transferred. Notice of transfer will be given to the teachers concerned as soon as possible.

Section 2: As of the beginning of the 1975-76 school year a teacher who is involuntarily transferred will be given credit for the building seniority accumulated in the building from which he was involuntarily transferred.

Section 3: No tenure teacher shall be involuntarily transferred two successive school years.

Section 4: When involuntary transfers are necessary, lists of positions in other schools shall be made available to all teachers being transferred. Transfers shall be based on qualifications, certification, and length of service in the system.

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[39]Material provided by Salt Lake City School District, Salt Lake City, Utah.

Section 5: Exceptions to this procedure shall only be made in emergencies. In such cases the Superintendent shall act in the best interest of the School System and so notify the Federation.[40]

In Gresham, Oregon, seniority is based upon a different concept--the last date of hire within a particular area of certification. The policy on reduction in force reads:

C. Reduction in Force; 1. Layoff

The District shall determine when reductions in force are necessary and which programs shall be affected. If the Board has formally considered a reduction in force it will immediately notify the Association. Such notice will be writing and will indicate the program(s) which may be affected. The District's overall instructional program will be given priority consideration. Employees shall be considered for retention on the basis of related experience, eduation, certification, and performance. When two or more employees are considered equally qualified for retention, seniority within the District shall control. Seniority shall be defined as the employees total length of service since the last date of hire within a particular area of certification. Any teacher who is to be laid off will be so notified in writing as soon as practicably possible. Such notice will include the proposed time schedule and the reasons for the proposed action.[41]

In Cedar Rapids, Iowa, the policy on staff reduction allows for flexibility in consideration of seniority by grouping teachers in several ranges of employment.

STAFF REDUCTION

A. REDUCTION IN FORCE

If the school district, in its sole discretion shall determine to reduce staff, or discontinue programs, an effort shall be made to accomplish such reduction by attrition.

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[40]Agreement between the Board of Education of the City of Hammond, Indiana and the Hammond Teachers' Federation, Local 394, American Federation of Teachers, AFL-CIO, 1977-79.

[41]Material provided by Elmer L. Summerfield, Personnel Director, Gresham Public Shcools, Gresham, Oregon.

If such reduction or dismissal shall occur, those employees with emergency or temporary certificates shall be reduced first. Additional employees will be reduced according to the following seniority ranges:

1-2 years, 3-5 years, 6-8 years, 9-11 year, 12 years or more

Seniority as defined in this Article shall mean the total of continuous full-time service in the school district from the latest date of employment. Approved leaves shall be included in computing an employee's seniority.

No employees shall be dismissed unless all other employees in the lowest seniority ranges have been dismissed, except that the school district may override seniority considerations if an employee is essential to the continuation of an existing educational or affirmative action program.

Within seniority ranges the selection of employees for reduction shall be at the discretion of the school district.[42]

The Director of Personnel of the Bremerton, Washington, schools provide a set of statements on reduction in work force of classified staff.

A reduction in work force, if required by levy failure, program reduction, or budget reduction, shall be accomplished by the following procedure:

SECTION A: Categories of Positions

The following categories of positions shall be recognized for the purpose of layoff, recall and placement of displaced employees:

Category 1 Transportation

Cateogry 2 Maintenance, Warehousing and Distribution, and District Motor Pool

Category 3 Food Services

Category 4 Operations

SECTION B: Definitions

For the purpose of this Agreement the following definitions will be used:

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[42]Agreement between Cedar Rapids Education Association and Cedar Rapids Community School District, 1977-1978, Cedar Rapids, Iowa.

1. Displaced Employee - An employee who has been displaced from his permanent job classification but continues to work for the Employer in another job classification.

2. Laid-off Employee - An employee who is laid off without pay, but continues to accumulate seniority under this Agreement.

3. Seniority - Seniority in this reduction in force procedure is the same as defined in Article IV, Section E, with the following exception:

   In the event food services personnel are reduced, their seniority shall be computed as defined in Article IV, Section E, Paragraph 2, entitled "All Other Employees".

4. Rehiring - No one outside of the bargaining unit will be hired for a position unless no one in the bargaining unit is qualified to do the job or a qualified employee of the bargaining unit refuses the job.

SECTION C: Notice of Layoff

The employer will give affected employees fifteen (15) working days notice before date of layoff.

SECTION D: Seniority Procedure Steps

1. An employee subject to layoff in a category may displace the least senior employee in the same or lower classification within that category provided he/she has the seniority to do so and meets the qualifications of the job.

2. In the event the above procedure is followed and the employee subject to layoff is not placed, he/she may displace a less senior employee in any category provided he/she meets the qualifications of the job.

3. Should a displaced employee reject assignment to his/her permanent classification, his/her current classification will become the permanent classification and the base rate will be reduced/raised to the rate of pay for that job.

4. Employees shall accumulate seniority while on layoff.

SECTION E: Recall Procedure

1. When an opening occurs in a job classification displaced employees from that category within the District will first be offered reinstatement to their previous jobs in order of seniority.

2. Should the employer be unable to fill the opening category in this manner, employees on layoff from that category will be offered recall in order of seniority.

3. Should the employer be unable to fill the opening in the above manner, employees on layoff from other categories will be offered recall in accordance with Article VII, Section A.

4. If the employer is unable to fill the open position in the above manner, it may hire applicants from outside the bargaining unit.

5. Laid off employees must accept recall regardless of shift to their previous classification or be terminated. If an employee on layoff rejects the recall to a lower classification, he/she will not be called again for a lower classification unless he/she notifies the Employer in writing. If thereafter he rejects such recall to a lower classification, he/she will be terminated.

6. Employees on the recall lists, when recalled to work shall be given five (5) days advance notice in which to report to work, such notice shall be by certified mail. When the employee receives notice of recall, he/she should notify the Employer on or before 3:00 p.m. of the second working day following the receipt of such notice of his/her intention of accepting or rejecting recall or he/she will be terminated. Notice by mail shall be completed by deposit of the notice in the United States Post Office, Certified Mail - Return Receipt Requested - directed to the employee at his/her address shown on the Employer records.

7. If an employee fails to report within five (5) working days after proper notice, without giving a reason acceptable to the Employer for not reporting, he/she will be terminated.

8. In instances in which employees cannot return to work within the required time limit, the next eligible employee may be recalled and may be permitted to work until the senior employee

returns. The next eligible employee may reject the temporary recall without losing his/her seniority on the recall list.

9. Employees shall notify the Employer of their proper post office address or change of address. The Employer shall be entitled to rely upon the address shown upon its records.

10. Employees accepting recall will be paid the job base rate for the job to which they are recalled.[43]

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[43] Material provided by Margaret Berry, Director of Personnel, Bremerton Public Schools, Bremerton, Washington.

Chapter VI

CONSIDERATIONS IN THE DEVELOPMENT OF REDUCTION IN FORCE POLICIES

Policy Considerations

The status of reduction in force varies greatly. Some districts have processed massive layoffs while others are busily recruiting additional staff to meet manpower needs. Some districts have voluminous policies and procedures to deal with RIF while others have no formal statement on the subject. And for a few of the latter, the problem of reduction in force is an irrelevant one, something that happens to somebody else. However, school boards and teachers' associations jointly share concerns over the why, what, how, when, and who of reduction in force.

In many cases those districts which have had to layoff staff have adopted rather elaborate statements. For example, the question of seniority is not necessarily limited on how long one has been a teacher, counselor or administratior. An examination of RIF provisions reveals that many factors bear upon "seniority": Is seniority expressed in terms of exprience in all previous and present employment? In terms of length of service in the building, department or grade level, or school district? What relevance do factors such as certification, fields of preparation, tenure, and participation in activities have upon the determination of seniority? Thus, provisions for determining seniority are as complicated as those for breaking ties for playoffs in the National Football League. In the end, a flip of the coin or a lottery draw may decide which staff member is laid off. But before the coin is tossed, a number of matters need to be specified.

Purpose. An essential element in a reduction in force statement is a general one of basic education policy. For example, the Yonkers Public Schools, New York, policy has a "Level of Staffing" clause which provides for "not less than 50 professionals to each 1000 pupils."

Cause. In some states the legislature has enacted laws which govern reduction in force. Such laws will identify the reaons for which reductions in force may be processed. School board policy statements and negotiated agreements also spell out the causes for RIF. These three are frequently cited: 1) decrease in student enrollment, 2) decrease in funds, and 3) district consolidation or reorganization. The insertion of the word substantial before decrease in clauses one and two adds considerable protection for teachers and is, again, an illustration of the complexity of the topic that a single word may generate.

Notice. A common feature incorporated into a policy or agreement is one which requires the board or its representative, the superintendent, to notify the association by a certain date of its intention to effect a reduction in force. Further, the board or superintendent then share with the association the data on finances, anticipated enrollments, manpower needs, staff employment, program priorities, and all other matters pertinent to the proposed RIF.

Association Response. After the association has received the data from the board or superintendent, the association is granted the right to meet and confer with the board. The association may discuss or negotiate the salient factors identified by the board, selected priorities, alternatives to proposed reductions, and other matters before final decisions are made.

Budget Considerations. In the event of a reduction in force the parties involved may wish to include a statement on the funding of instructional materials, supplies, and resources. A provision of this sort may stipulate that these kinds of budget items will be funded at a level equal to or not less than the previous year's level of funding. In a tight budget the presence of such a clause has a significant impact upon the availability of instructional resources.

Educational and Personnel Factors. There are many factors, both educational and personnel, that need to be considered in the preparation of RIF lists. Among these are organization and administration of the district or school which might consider such items as a district-wide reduction in force rather than one based upon department or grade level, building, specialists, or other administrative unit bses. If RIF were accomplished upon a district-wide basis, for example, a program that had recently expanded might suffer because most members of its staff might be recently hired employees. On the other hand, if a building is closed, are those teachers the ones to be laid off or do they have the right to "bump" those less senior to them in terms of other factors?

Any consideration of RIF without mention of program offerings is worthless. The district's philosophy of education, the educational needs of students, the curriculum offerings, the co-curricular and extra-curricular offerings, the level of staffing, instructional materials and resources, special education and other programs, and similar concerns need to be addressed.

Extensive coverage is given in most instances to the distinctive qualities of personnel which are to be considered. Among these are, foremost, seniority. Seniority may be defined in numerous ways and should be clearly

specified. Other factors frequently mentioned are certification, degrees, qualifications, employment status, i.e., whether an individual is a probationary, temporary, or substitute employee, and tenure. The questions of performance is one of considerable intricacy, if not of confusion, and needs close examination.

RIF provisions sometimes include special ones for teachers within a few years of retirement, staff assigned to special programs, staff hired under affirmative action programs, and personnel of the association. The latter are frequently protected from RIF regardless of their seniority or other factors to prevent a decimation of the association's leadership. While teachers within a few years of retirement may be protected from RIF with special provisions, a district may also have made special provisions for early retirement for those same persons. Any change in the laws governing mandatory retirement will produce a need for further study of both protection clauses and early retirement provisions.

RIF Lists. The provisions should cover procedures for the preparation, distribution, and publishing of RIF lists. An agreement between the school administration and the teacher association may provide for cooperative action or these items may be done entirely by the administration of the school. There should be procedures which identify where, when, and to whom the RIF lists are distributed. The time period of distribution should allow employees sufficient time to conduct appeals.

Careful attention should be given to the rights of the teacher association or an individual to appeal an alleged violation of the policy or agreement. Some of the more obvious items to be covered are timelines for the appeal process, procedures and criteria to be followed in the breaking of ties, and the effects of leaves and other forms of absence from duty. For

example, voluntary military service may be construed as a break in service and thus reduce seniority while involuntary military service may not.

Notification of Individuals. In many instances the teacher's association will have the right to obtain the names of individuals on the RIF list as soon as, or even before, the individuals named themselves are notified. The advantages to the association in receiving early notification of individuals to be laid off can work to the benefit of the district, the association, and individuals. No provision is complete without the inclusion of a specific date for the notice of a projected layoff. Other items that are frequently included are how the notice is to be given (often by registered mail), the reason for layoff, bumping rights, appeal procedures, and similar matters.

Benefits to Staff Reduced. There are various kinds of benefits which districts offer to employees who are laid off. One form of benefit is a protection clause which prevents employment of new personnel until the staff reduced are reemployed. Financial support may be offered in the form of severance pay, for unused sick leave, or for retraining. The district may also provide help in job relocation or through personal references for placement papers.

Recall. A staff memeber who is laid off is also guaranteed recall rights. Typically, recall is based on the inverse order of layoff. The principle of seniority is invoked to provide for the last person laid off (presumably the most senior of those laid off) to be the first person recalled to duty. Second, the names of staff laid off are automatically placed on a recall list. This provision guarantees recall rights without any action on the part of the person who is laid off. Such a procedure eliminates a dispute over which staff members first filed for reinstatement.

The recall procedures generally identify the period of time that recall rights are in force. When and if vacancies occur, the manner in which notices of such vacancies are distributed will be identified. As in the notice of a layoff, the announcement of a vacancy is generally sent by registered mail. Although personnel who are laid off generally do not have to initiate action to place their names on a recall list, they may be required to notify the district of any change in address, employment, or any other condition that may affect their employability.

If a position is offered to a person laid off, that individual must notify the district of the decision to accept or reject the offer by a certain date from the time of employment offer. Furthermore, the offer will be extended to the person who has preference on the recall list.

Economic fringe benefits form an important part of compensation programs. Consequently, RIF provisions often identify (1) which kinds of benefits continue in force, (2) what portion of the costs, if any, the district will continue to subsidize, and (3) what the employee's rights, options, and responsibilities are for continuation of benefits.

Restoration Rights. There are also different kinds of rights which are restored, in whole or in part, to persons who are rehired. In some cases the persons rehired are placed on the salary schedule without enduring any loss from the involuntarily interrupted service. Retirement benefits may also be restored by giving the individual the option to buy back retirement credit. Other kinds of rights include restoration, without interruption, of leaves and similar benefits. In some cases, a district has elected to count the period of layoff as time in service in the district. The restoration rights to those persons rehired are also of considerable consequence and should receive no less attention than that given to reduction in force.

Grievance Procedures. Cohen concluded that the law is not settled on the question of according procedural due process as a pre-conditon to staff reduction.[1] There is no reason to believe that the law is any more definitive on the questions of handling grievances than it is on other facets of reduction in force. Consequently, the inclusion of a grievance procedure on matters pertaining to reduction in force should be considered.

Summary. Local considerations, more than district size and location, have the greatest bearing upon the magnitude of the problem of reduction in force. The Houston Independent School District, for example, is increasing in student enrollment while Los Angeles, once the center of a burgeoning population, has experienced a decline in student enrollment. Some districts have experienced little or no trauma in staff reductions while others have suffered much. The future for other districts projects a likelihood of a reduction in force. The absence or presence of carefully developed policies or negotiated agreements on reduction in force will have a great effect upon how well reductions are made.

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[1] George H. Cohen, Reductions in Force Among Teachers From the Local Association's Perspective: A Challenge Posed by an Emerging Problem, Washington, D.C.: National Education Association, 10.

Chapter VII

IMPLICATIONS OF REDUCTION IN FORCE FOR EDUCATIONAL PLANNING

In the preceding chapters, consideration has been given to the factors which have stimulated a need for reduction in force policies and procedures, views held by professional associations have been discussed and attention has been given to sample policies and procedures as well as to the considerations involved in the development or adoption of reduction in force policies.

While the adoption of a reduction in force policy may meet a statutory requirement (as is the case in Nebraska) and may provide operating procedures for use when a reduction in force occurs, it should be noted that reduction in force is only one solution to the issues which confront K-12 education and, in particular, to issues which are likely to impact upon other facets of the educational enterprise.

School districts must continue to clarify their practices of educational planning so that policies and procedures adopted or implemented, including reduction in force, are viewed in a framework of educational effectiveness and efficiency.

Recommendations for Planning

The public demand of the past few years and for the projected future is for increased effectiveness and efficiency in the operation of K-12 education. While public support for education is high in comparison to support for other public services, the continuation of high levels of public support will be dependent upon the response which educational decision-makers give to demands for improvements in educational effectiveness and efficiency. Items which

should be prepared include, but are not limited to, the items discussed in the paragraphs which follow.

School District Philosophy and Goals. The philosophy and goals of a school district should be reviewed at periodic intervals with such review occurring at least once every five years. (Studies of planning show a need for either revising or reaffirming plans at least once within each five-year cycle.) If these statements of philosophy and goals are to have acceptance within a community, the citizens must have the major role in adopting these statements as the ones which they wish to see achieved in the operation of the school. Meaningful citizen involvment, however, may be difficult to achieve if either educators or members of boards of education see the establishment of goals and objectives as being a prerogative of their role or profession.

Priorities for School District Operation. The adoption of philosophy and goals should be followed by a listing of school district operations, including possible future operations, and these specific items and programs should be used as a basis for identifying community priorities for school operations. To formally adopt plans for school operations, a board of education needs information about items which are essential, important, and of little importance. Essential items will include those which are mandated by law and those which are perceived as being essential by members of the community. Items which are classified as important should be those items which are rated as being of high value in the community but of lesser value than other items or not mandated by law. The third category should include programs which are not mandated by law and which are perceived as being of low importance as rated by citizens. While consideration should be given to the view of educators and outside experts, decisions should reflect the expectations of the community. Each program should be regularly reviewed so that the

maintenance or discontinuation of elements of the program can be considered.

Projections of Population Trends for the District. Each district should have organized data which indicate real and projected student population in the district. In Nebraska, data are available for each community or are identifable from such sources as the State Planning Commission. Examination of population data should permit development of plans and alternate plans for responding to anticipated changes in district enrollment.

Program Plans. Data from population projections, community establishment of priorities for school operations, and community affirmation of school philosophy and goals should provide a basis for the establishment of short-range operational plans and long-range plans for specific areas of operation such as facilities, staffing, program evaluation and fiscal needs projections.

Staffing Plans. Using program plans, a long-range staffing plan should be prepared. The experience, certification, training, interests, and aptitudes of existing staff should be reviewed and categorized. Plans should be made for needed changes in the number or skills of staff and these plans should be communicated to the faculty. District-sponsored training and retraining of existing staff should be considered so that future needs can be responded to without a reduction in program occurring as a result of reduction in staff. Replacement of staff vacancies should consider long-range staffing plans instead of the almost automatic practice of past years when a replacement was sought for the same assignments as were held by the person being replaced.

Facilities. A long-range plan for facilities should be developed for each school district. Such a plan would consider the program to be offered as well as the number of students and employees to be housed. Consideration should be given to joint construction of facilities with other governmental units such

as the city council and neighboring school districts. In many communities, duplication of facilities for special needs is a common phenomenon which strains the tax dollars of citizens and the budgets of governmental units, including schools.

Fiscal Planning. Fiscal plans should consider each source of revenue and should project anticipated revenues with consideration being given to high, moderate, and low projections. Such projections should be long-range and, at a minimum, should extend for a period of five years into the future. Fiscal plans should also contain a projection of expenditures which is an item-by-item and program-by-program projection which considers the priorities for operation set in the completion of the plans for priorities for school district operation. Program budgeting procedures should b adopted and implemented.

Community Relations. For each of the steps listed above, the active involvement of the community, at least to the extent of being fully informed, is essential. Public meetings to report long-range plans and to solicit public input prior to decision-making can be a useful strategy. In similar manner, the public should be regularly involved in the pri·ritizing of objectives and regularly informed on the program outcomes of school operations.

Evaluation Plans. Careful, systematic plans should be developed for each operation of the school district. Data collected should be organized and reported both to decision-makers and to the community. If program elements are prioritized, as recommended, a cycle for periodic review of each program element might be established. Such a practice can provide ongoing information about the effectiveness and efficiency of program elements.

Some Closing Comments

While reduction in force is one response to concerns which will be faced by many school districts--concerns about declining enrollments and increased costs of operations--the manner of responding will vary widely. Some districts will respond mechanically and with little or no consideration of educational priorities and educational plans; others will respond based on long-range plans which seek the maintenance of quality education coupled with economic efficiency in the operation of schools. A series of questions can help citizens, educators, and educational decision-makers determine the quality of educational planning which currently exists in their schools and, hopefully, can suggest needed steps to be taken so that changes which are made are not harmful to the education of K-12 students. These questions include:

1. Has the school district adopted a set of priorities for educational operations which identifies mandated, essential, important and auxiliary services? Does the plan include identification of reduction in services which will be made if necessary to meet legal or fiscal constraints?

2. Does the district have an inventory of the skills, training, certification and interests of its employees? Has this inventory been used as the basis for a long-range staffing plan which considers subplans for recruitment and selection of staff, supervision of staff, planned in-service, and plans for replacement needs?

3. Has the district projected its facilities needs including plans for maintenance or replacement of facilities? Has it planned its budget needs so that both fixed costs and replacement of maintenance costs are budgeted for stability in budget and taxing needs? Has it examined possibilities for shared use of facilities with other governmental agencies?

4. Has the district developed a long-range plan which considers the population of the district and the projected needs of the district vis-a-vis facilities and programs?

5. Is the public involved in setting priorities? Is citizen input given highest consideration in determination of planning decisions?

6. Do plans exist for evaluation of the impact of reductions in program, services or staff? Have the questions of interest to such evaluations been identified?

In addition to these questions, many more could be generated. Two of greatest importance might be: Have alternatives been considered for each decision? Have decisions been based on seeking to provide the best possible education for the students being served?

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